0001
MONDAY, FEBRUARY 1, 1999 9:55 A.M.
(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)
THE COURT: GOOD MORNING, EVERYBODY. I WANT TO TALK TO THE JURY FOR A MINUTE ABOUT SCHEDULING A LITTLE FURTHER.
TODAY'S SCHEDULE IS SUCH THAT WE ARE NOT PROBABLY LIKELY, ESPECIALLY IN VIEW OF THE FIRE ALARM, TO COMPLETE ALL OF THE TESTIMONY TODAY BY 12:00 O'CLOCK. BUT WE MIGHT FINISH IT BY AROUND 1:00 OR 1:30. IF WE WERE TO PRESS ON THROUGH THE LUNCH HOUR AND NOT TAKE LUNCH, WHICH IS SOMETHING YOU MIGHT PREFER, BECAUSE I WILL LET YOU GO FOR THE DAY TODAY UPON THE COMPLETION OF ALL OF THE EVIDENCE, BECAUSE I HAVE TO DO SOME WORK WITH THE LAWYERS ON THE JURY INSTRUCTIONS AND THE LIKE THIS AFTERNOON.
SO IT MIGHT BE SOMETHING YOU WOULD PREFER TO DO.
I'M GOING TO NEED TO WAIT UNTIL AROUND THE NOON HOUR TO SEE HOW WE'RE DOING ON THE SCHEDULE, BUT LET ME ASK YOU THIS GENERAL QUESTION: IF WE ARE ABLE TO COMPLETE ALL OF THE TESTIMONY BY AROUND 1:00 O'CLOCK OR SO BY GOING STRAIGHT THROUGH, ARE THERE ANY OF YOU THAT HAVE LUNCH COMMITMENTS THAT YOU WOULD NOT WANT TO FORGO?
JUROR NO. 10: I WOULD NOT FORGO, BUT I WOULD JUST NEED TO CALL AND JUST CANCEL.
THE COURT: WHY DON'T WE DO THIS: WOULD IT BE TIME ENOUGH FOR YOU TO DO IT IN OUR MID-MORNING RECESS? SO I'LL TALK TO THE LAWYERS IN THE MID-MORNING RECESS AND SEE HOW WE'RE DOING IF WE GET STARTED PROMPTLY, AND THEN YOU

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COULD MAKE THE PHONE CALL DURING THE RECESS?
JUROR NO. 10: NO PROBLEM.
THE COURT: SO I UNDERSTAND THAT IT WOULD BE GENERALLY YOUR PREFERENCE TO GO STRAIGHT THROUGH, AND THEN HAVE YOU LEAVE FOR THE DAY AROUND 1:00 O'CLOCK OR WHATEVER.
AND THEN, TOMORROW MORNING -- AND THEN THE SCHEDULE WOULD BE TOMORROW MORNING AT 9:00 O'CLOCK, WE WOULD START AND THE FIRST THING WE WOULD DO IS I WOULD INSTRUCT YOU AS TO THE LAW. WHEN I GET DONE DOING THAT, WE'LL BEGIN THE CLOSING ARGUMENTS. AND THE CLOSING ARGUMENTS WILL TAKE UP THE REMAINDER OF THE DAY, AND AT LEAST PART OF, IF NOT ALL OF THE FOLLOWING DAY, WHICH IS WEDNESDAY.
SO MY BEST GUESS IS THAT YOU'LL PROBABLY RETIRE TO BEGIN YOUR DELIBERATIONS, I WOULD THINK, IN ALL LIKELIHOOD, WEDNESDAY AFTERNOON, BUT IF NOT THEN, AT LEAST BY THURSDAY MORNING. SO THAT'S SIMILAR TO WHAT I TOLD YOU LAST WEEK.
SO THE CLOSING ARGUMENTS ARE BASICALLY GOING TO TAKE SOMEWHERE CLOSE TO TWO DAYS, I THINK, IN TERMS OF TIME, OR A DAY AND A HALF, TWO DAYS, SOMETHING LIKE THAT.

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OKAY. SO I THINK WHAT WE WANT TO DO THEN IS COMPLETE THE TESTIMONY NOW.

MR. OHLEMEYER, WHO IS YOUR NEXT WITNESS?

MR. OHLEMEYER: MICHAEL PARRISH.

TESTIMONY OF

MICHAEL E. PARRISH, PH.D.,

A WITNESS CALLED ON BEHALF OF THE DEFENDANT, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:



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THE CLERK: PLEASE STATE YOUR NAME.

THE WITNESS: MICHAEL E. PARRISH.

THE CLERK: PLEASE SPELL YOUR LAST NAME.

THE WITNESS: P-A-R-R-I-S-H.

THE CLERK: IS MICHAEL M-I-C-H-A-E-L?

THE WITNESS: THAT'S CORRECT.

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

THE COURT: OKAY. MR. OHLEMEYER, YOU MAY PROCEED.

MR. OHLEMEYER: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. OHLEMEYER: Q. GOOD MORNING, DR. PARRISH.

A. GOOD MORNING.

Q. THE FIRST THING IS, I GATHER YOU'RE NOT A MEDICAL DOCTOR; RIGHT?

A. THAT'S CORRECT. I'M NOT.

Q. WHAT TYPE OF DOCTOR ARE YOU?

A. WELL, I'M WHAT THEY CALL A DOCTOR OF PHILOSOPHY, A PH.D.

Q. AND IN WHAT FIELD DID YOU RECEIVE YOUR PH.D.?

A. IN HISTORY.

Q. AND ARE YOU CURRENTLY EMPLOYED?

A. YES, I AM.

Q. WHAT DO YOU DO?

A. I'M A PROFESSOR OF HISTORY AT THE UNIVERSITY OF CALIFORNIA AT SAN DIEGO.



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Q. HOW LONG HAVE YOU BEEN INVOLVED IN EITHER THE STUDY OR THE TEACHING OF HISTORY?

A. WELL, I RECEIVED MY PH.D. DEGREE IN 1968 FROM YALE UNIVERSITY, AND I BEGAN TEACHING IN THAT VERY FALL AT THE UNIVERSITY OF CALIFORNIA AT SAN DIEGO.

SO IT'S NOW 30 YEARS THAT I'VE BEEN TEACHING HISTORY.

Q. YOU'VE BEEN AT CAL SAN DIEGO THE ENTIRE TIME?

A. THAT'S CORRECT.

Q. HAVE YOU DEVELOPED ANY SPECIAL INTERESTS OR SPECIAL AREAS OF STUDY OVER THE YEARS?

A. WELL, I CONSIDER MYSELF TO BE SOMETHING OF AN EXPERT ON 20TH CENTURY HISTORY OF THE AMERICAN PEOPLE, BOTH POLITICAL HISTORY, SOCIAL AND CULTURAL HISTORY OF THE AMERICAN PEOPLE OF THE 20TH CENTURY. THAT IS MY SPECIAL AREA OF TEACHING AND RESEARCH.

Q. HAVE YOU PUBLISHED ANY BOOKS OR JOURNAL ARTICLES IN THE FIELD OF HISTORY?

A. I BELIEVE THREE BOOKS THAT I HAVE AUTHORED, AND

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ONE BOOK THAT I COAUTHORED WITH A COLLEAGUE FROM STANFORD. AND I'VE PUBLISHED MAYBE A DOZEN OR MORE ARTICLES.

Q. IN WHAT FIELD HAVE YOU WRITTEN ON?

A. WELL, I'VE WRITTEN GENERALLY ON THE POLITICAL HISTORY OF THE UNITED STATES IN THE 20TH CENTURY, THE SOCIAL HISTORY OF THE UNITED STATES, HISTORY OF AMERICAN LAW. I'VE WRITTEN A BIOGRAPHY OF JUSTICE FELIX FRANKFURTER AND A GENERAL HISTORY OF AMERICA BETWEEN THE WORLD WARS, FROM 1919 UNTIL PEARL HARBOR.



Q. DOES HISTORY HAVE A DEFINITION?

I GUESS THE BETTER WAY TO ASK THE QUESTION IS: WHAT IS HISTORY?

A. WELL, I LIKE TO SAY THAT HISTORIANS TRY TO INTERROGATE THE PAST. THEY TRY TO ASK THE PAST QUESTIONS, MUCH LIKE YOU ARE ASKING ME HERE THIS MORNING, TO TRY TO ANSWER QUESTIONS ABOUT WHAT HAPPENED, WHY IT HAPPENED, THE WAY IT DID, AND ALSO TO ASK QUESTIONS, FOR EXAMPLE, ABOUT WHAT PEOPLE THOUGHT, WHAT THEY BELIEVED, WHAT THEIR ASSUMPTIONS AND WHAT THEIR EXPECTATIONS WERE ABOUT THE EVENTS OF PARTICULAR TIMES IN THE PAST.

Q. DOES THE STUDY OF HISTORY REQUIRE ANY SPECIAL TRAINING OR BACKGROUND OR EDUCATION?

A. WELL, WHEN HISTORIANS TRY TO INTERROGATE THE PAST AND TO RECREATE, FOR EXAMPLE, EVENTS IN THE PAST OR WHAT PEOPLE WERE THINKING OR WHAT THEIR EXPECTATIONS WERE, THEY HAVE TO BASICALLY USE THE DOCUMENTS THAT PEOPLE HAVE LEFT BEHIND; IN OTHER WORDS, BOTH THE WRITTEN DOCUMENTS AND OTHER TYPES OF DOCUMENTARY EVIDENCE.

SO HISTORIANS BASICALLY HAVE TO BE VERY GOOD AT INTERROGATING DOCUMENTS AND INTERPRETING DOCUMENTS, YES.

Q. THE STUDY OF HISTORICAL MATERIALS THAT'S THE FOCUS OF YOUR WORK ON 20TH CENTURY HISTORY, IS THAT SOMETHING PEOPLE WOULD CONSIDER MORE RECENT HISTORY AS OPPOSED TO ANCIENT HISTORY?

A. I WOULD THINK SO. I WOULD REGARD MYSELF AS SORT OF A MODERN AMERICAN HISTORIAN, CONTEMPORARY AMERICAN HISTORIAN, RATHER THAN SOMEBODY DOING HISTORY ON THE



COLONIAL, 19TH CENTURY, YES.

Q. DO YOU STUDY MORE RECENT HISTORY DIFFERENTLY THAN SOMEBODY WHO STUDIES ANCIENT HISTORY?

A. WELL, THE HISTORIAN WHO WORKS IN THE 20TH CENTURY FIELD HAS MANY MORE DOCUMENTS TO DEAL WITH, MORE DOCUMENTS TO LOOK AT THAN, SAY, SOMEONE STUDYING 14TH CENTURY FRANCE OR SOMEONE STUDYING, SAY, THE ANCIENT WORLD OF THE GREEKS AND THE ROMANS.

SO IN A SENSE, OUR TASK IS SOMEWHAT MORE DAUNTING IN TERMS OF ALL OF THE DOCUMENTS AND MATERIALS THAT ONE HAS TO LOOK AT.

Q. YOU USED THE WORDS "DOCUMENTS" A COUPLE OF

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TIMES.
IN RESPECT TO WHAT YOU STUDY AS A HISTORIAN, WHAT DO YOU MEAN BY "DOCUMENTS"?
A. WELL, OF COURSE, THERE ARE WRITTEN DOCUMENTS. IN THE ERA, FOR EXAMPLE, BEFORE RADIO OR TELEVISION OR MOTION PICTURES OR THE INTERNET, THERE ARE WRITTEN DOCUMENTS; LETTERS, DIARIES, NEWSPAPERS, MAGAZINES, PAMPHLETS, BROADSIDES.
AND IN THE MORE CONTEMPORARY PERIOD, HISTORIANS LOOK AT VISUAL DOCUMENTS; PHOTOGRAPHS, FOR EXAMPLE, PAINTINGS, MOTION PICTURES, TELEVISION PROGRAMS, ETCETERA.
SO A DOCUMENT CAN BE BOTH A WRITTEN DOCUMENT OR IT CAN BE A VERBAL DOCUMENT, LIKE A RADIO PROGRAM OR AN ORAL HISTORY THAT SOMEONE HAS GIVEN, OR IT CAN BE A VISUAL DOCUMENT SUCH AS A MOTION PICTURE OR A TELEVISION PROGRAM OR EVEN THE INTERNET.



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Q. YOU USED THE WORD "BROADSIDE."
TELL US WHAT A BROADSIDE IS.
A. WELL, THE BROADSIDE WOULD BE LIKE A POSTER WHICH -- TRADITIONALLY, FOR EXAMPLE, THERE WERE POLITICAL BROADSIDES THAT ARE POSTED ON THE SIDES OF BUILDINGS OR WALLS. THEY ARE A FORM OF COMMON CAUSE, LIKE THE SIGNS YOU SEE ON BUS STOPS TODAY ADVERTISING SOMETHING.
A BROADSIDE IS BASICALLY A PUBLIC COMMUNICATION THAT PEOPLE WOULD PUT IN A CONSPICUOUS PLACE, WHERE THE PUBLIC OR PARTS OF THE PUBLIC WOULD SEE THE BROADSIDE.
Q. DOESN'T THE METHOD YOU USE TO STUDY MATTERS OF HISTORY CHANGE OR DEPEND UPON WHAT SPECIFICALLY IT IS YOU'RE STUDYING?
A. WELL, THE TYPES OF SOURCES MIGHT BE DIFFERENT DEPENDING UPON WHERE YOU WERE, FOR EXAMPLE, GOING TO EXAMINE.
PERHAPS THE WAY IN WHICH, SAY, PRESIDENT ROOSEVELT OR PRESIDENT TRUMAN, SAY, WERE PORTRAYED IN CARTOONS, THAT WOULD BE -- YOU HAVE A SOMEWHAT DIFFERENT SET OF SOURCES THAN IF YOU WERE GOING TO LOOK, SAY, AT HOW PRESIDENTS ROOSEVELT OR TRUMAN -- HOW THEY CONDUCTED POLICY OR FOREIGN RELATIONS.
SO THE TYPES OF DOCUMENTS WOULD BE RATHER DIFFERENT, DEPENDING UPON THE TOPIC, DEPENDING UPON EXACTLY WHAT WERE THE QUESTIONS YOU WERE TRYING TO ANSWER AS A HISTORIAN.
Q. THE METHODOLOGY, THOUGH, THAT YOU USE, DO YOU USE THE SAME METHODOLOGY TO STUDY THE DIFFERENT SOURCES?



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A. YES. YOU TRY -- AS I SAY, YOU TRY TO INTERROGATE THE DOCUMENTS THAT PEOPLE HAVE LEFT BEHIND, BECAUSE THE DOCUMENTS REALLY ARE THE BASIS OR THE SOURCES ON WHICH HISTORIANS THEN TRY TO CREATE THE PAST IN TERMS OF WHAT

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HAPPENED, WHY IT HAPPENED THE WAY IT DID, WHAT DID PEOPLE BELIEVE, WHAT WERE THEY THINKING.

SO THAT A GOOD HISTORIAN TRIES TO INTERPRET OR INTERROGATE DOCUMENTS IN MUCH THE SAME WAY, DEPENDING UPON THE PARTICULAR SOURCE OR THE PARTICULAR QUESTIONS THAT HE OR SHE IS TRYING TO ANSWER.

Q. WHAT ROLE DOES HINDSIGHT PLAY, IF ANY, IN THE STUDY OF HISTORY -- STRIKE. LET ME ASK YOU A PREDICATE QUESTION, DOCTOR.

ARE YOU FAMILIAR WITH THE PHRASE "HINDSIGHT"?

A. YES.

Q. WHAT DOES "HINDSIGHT" MEAN TO YOU?

A. WELL, HINDSIGHT, I GUESS, MEANS THAT PERHAPS I WISH I HAD BEHAVED DIFFERENTLY UNDER THE CIRCUMSTANCES, HAD I KNOWN WHAT THE CONSEQUENCES OF MY ACTION MIGHT HAVE BEEN AT THE TIME.

Q. DOES HINDSIGHT PLAY ANY ROLE IN THE STUDY OF HISTORY?

A. WELL, IN CERTAIN WAYS, IT DOES. A HISTORIAN, A GOOD HISTORIAN, MIGHT, FOR EXAMPLE, LOOK AT A DOCUMENT AND SAY, "WELL, THIS PERSON OUGHT TO HAVE KNOWN THAT CERTAIN CONSEQUENCES WOULD FOLLOW FROM THEIR BEHAVIOR, FROM THE DECISION OR THE CHOICES THAT THEY MADE."

BUT HINDSIGHT CAN ALSO BE VERY TREACHEROUS,



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BECAUSE A HISTORIAN MIGHT TRY TO IMPOSE HIS OWN PRESENT THINKING, HIS OWN PRESENT CONCEPTIONS UPON THE PAST, UPON A DOCUMENT, BASICALLY, AND TO IGNORE THE MEANING OF THE DOCUMENT AT THE TIME.

SO THERE'S A DANGER THAT YOU WOULD APPLY HINDSIGHT AND PERHAPS MISINTERPRET A DOCUMENT.

Q. LET ME ASK YOU SPECIFICALLY WHAT YOU WERE ASKED TO DO IN CONNECTION WITH THIS CASE?

A. WITH THIS SPECIFIC CASE?

Q. YES.

A. I WAS ASKED TO APPLY MY SKILLS AS A HISTORIAN TO SEEK TO UNDERSTAND WHAT THE PEOPLE OF CALIFORNIA -- IN A VERY BROAD SENSE, WHAT THE PEOPLE OF CALIFORNIA AND ALSO ACROSS THE UNITED STATES, WHAT THEY KNEW ABOUT THE RELATIONSHIP BETWEEN SMOKING CIGARETTES AND HEALTH.

AND SPECIFICALLY, TO EXAMINE THE EXTENT TO WHICH THEY WERE AWARE OF THE DANGERS OF SMOKING AND ABOUT THE POSSIBLE CONSEQUENCES OF ENGAGING IN THAT PRACTICE.

Q. DID THAT INCLUDE COLLECTING AND REVIEWING SOURCES OF INFORMATION THAT HAD A TENDENCY TO CREATE OR REFLECT THOSE TYPES OF EXPECTATIONS?

A. WELL, I LOOKED AT SOURCES THAT I THINK BOTH REFLECTED THE EXTENT OF POPULAR UNDERSTANDING OR POPULAR AWARENESS ABOUT CIGARETTES AND VARIOUS HEALTH PROBLEMS.

BUT MANY OF THOSE SAME DOCUMENTS ALSO NOT ONLY REINFORCED EXISTING ATTITUDES, EXPECTATIONS, BUT THEY ALSO IN MANY CASES CREATED NEW AWARENESS OR NEW EXPECTATIONS ABOUT THE RELATIONSHIP BETWEEN SMOKING AND VARIOUS HEALTH



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ISSUES.

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Q. WHAT SORTS OF SOURCES OF INFORMATION DID YOU REVIEW? CAN YOU DESCRIBE THEM GENERALLY FOR US.
A. WELL, HISTORIANS GENERALLY LOOK AT WHAT THEY CALL BOTH SECONDARY SOURCES AND WHAT THEY CALL PRIMARY SOURCES.
SECONDARY SOURCES, FOR EXAMPLE, ARE BASICALLY BOOKS AND ARTICLES THAT OTHER SCHOLARS HAVE ALREADY WRITTEN ABOUT A PARTICULAR TOPIC. SO WHEN I BEGAN MY RESEARCH, I ATTEMPTED TO READ VERY BROADLY ABOUT THE HISTORY OF THE TOBACCO INDUSTRY, THE HISTORY OF CIGARETTES, THE HISTORY, FOR EXAMPLE, OF CERTAIN DISEASES LIKE LUNG CANCER.
I THEN MOVED ON FROM THESE GENERAL SECONDARY SOURCES INTO PRIMARY SOURCES, SUCH AS NEWSPAPERS, POPULAR MAGAZINES, PERIODICALS. I ALSO LOOKED AT THE VARIOUS HEALTH TEXTBOOKS THAT WERE USED IN THE CALIFORNIA SCHOOLS IN THE 20TH CENTURY.
I ALSO SPENT SOME TIME ON THE PERSONAL PAPERS OF VARIOUS MEMBERS OF CONGRESS WHO WERE VERY ACTIVE IN ATTEMPTING TO REGULATE CIGARETTES IN THE -- DURING THE LAST 35 TO 40 YEARS, PEOPLE LIKE SENATOR RICHARD NEWBERGER OF OREGON.
I ALSO LOOKED AT CALIFORNIA STATE MATERIALS, LEGISLATIVE HEARINGS, ATTEMPTS TO PASS LAWS IN THE CALIFORNIA LEGISLATURE, BOTH SUCCESSFUL AND UNSUCCESSFUL, REGULATING TOBACCO, AND ESPECIALLY CIGARETTES.
AND FINALLY, I ALSO LOOKED AT VARIOUS FORMS OF POPULAR MEDIA, THINGS SUCH AS SLANG TERMS, HUMOR, SONGS, MOTION PICTURES, CARTOONS, AND TELEVISION, NEWS PROGRAMS AND





TELEVISION DOCUMENTARIES.
Q. ARE THESE THE TYPES OF SOURCES THAT YOU AS AN HISTORIAN WOULD REASONABLY RELY UPON IN YOUR WORK TO STUDY A MATTER OF HISTORY, REGARDLESS OF WHAT THE SPECIFIC SUBJECT MATTER WAS?
A. WELL, PERHAPS THE RANGE OF SOURCES THAT I LOOKED AT WAS MUCH BROADER THAN A HISTORIAN WOULD LOOK AT, DEPENDING UPON WHAT THE TOPIC HAPPENED TO BE. I DON'T THINK YOU WOULD QUITE LOOK AT THIS RANGE OF SOURCES IF THE TOPIC WERE SOMEWHAT NARROWER.
FOR EXAMPLE, IF YOU WERE LOOKING AT THE ORIGINS OF THE KOREAN WAR, SOMETHING OF THAT SORT, YOU MIGHT NOT LOOK AT QUITE THIS RANGE OF MATERIALS, ESPECIALLY FROM POPULAR CULTURE, LIKE MOTION PICTURES OR OTHER SOURCES.
Q. DID YOU LOOK AT SOURCES OF INFORMATION OF THE TYPE THAT WOULD TEND TO CREATE AND/OR REFLECT EXPECTATIONS OF ORDINARY CONSUMERS ABOUT CIGARETTES AND CIGARETTE SMOKING?
A. WELL, I THINK I LOOK AT -- I DON'T MEAN TO REPEAT MYSELF, BUT MANY OF THE SOURCES OR DOCUMENTS THAT I LOOKED AT NOT ONLY REFLECTED, FOR EXAMPLE, CONTEMPORARY AND POPULAR ATTITUDES, UNDERSTANDINGS ABOUT THE RELATIONSHIP OF CIGARETTES TO VARIOUS FORMS OF DISEASE, BUT IN SOME CASES,

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THEY ALSO CREATED NEW UNDERSTANDINGS OR NEW FORMS OF AWARENESS TOO.

MAY I HAVE A DRINK OF WATER HERE FOR A MOMENT. I'M A BIT DRY.

Q. CERTAINLY. CERTAINLY.



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LET ME ASK YOU, DR. PARRISH, ABOUT BOOKS OR MAGAZINES OR JOURNAL ARTICLES THAT HAVE A MORE NARROW OR LIMITED FOCUS THAN SOME OF THE THINGS YOU DESCRIBED.

DO THINGS THAT ARE WRITTEN IN MEDICAL TEXTBOOKS OR SCIENTIFIC JOURNALS OR SCIENTIFIC PAPERS CREATE OR REFLECT EXPECTATIONS ON THE PART OF ORDINARY CONSUMERS, INCLUDING PEOPLE WHO WOULDN'T NECESSARILY READ THOSE JOURNALS?

A. WELL, I THINK THAT'S TRUE. FOR EXAMPLE, 1950 IS A VERY IMPORTANT DATE IN THE HISTORY OF SCIENTIFIC RESEARCH AND THE PUBLICATION OF SCIENTIFIC RESEARCH ABOUT THE RELATIONSHIP OF CIGARETTES TO LUNG CANCER.

IT WAS IN 1952 -- 1950, RATHER, YOU HAVE THREE VERY IMPORTANT STUDIES THAT COME FORTH, ONE BY MORTON LEVIN, L-E-V-I-N, ONE BY DRS. WYNDER AND GRAHAM, AND ONE FROM A GROUP OF BRITISH DOCTORS, DOLL AND HILL.

NOW, THIS RESEARCH WAS BASED UPON THE STUDY OF VICTIMS OF LUNG CANCER WHO HAD DIED, AND CORRELATING THEIR DISEASE OR THEIR DEATHS WITH WHETHER OR NOT THEY WERE SMOKERS OR NONSMOKERS.

AND THESE STUDIES, THESE THREE STUDIES WERE PUBLISHED IN SOURCES OF MEDICAL INFORMATION IN THE EARLY 1950S, IN 1950. AND THESE REPORTS WERE THEN PUBLISHED, OR AT LEAST PART OF THESE REPORTS WERE PUBLISHED IN MAJOR AMERICAN NEWSPAPERS, LIKE THE LOS ANGELES TIMES, THE SAN FRANCISCO CHRONICLE. THEY WERE CARRIED OVER THE WIRE SERVICES BY THE ASSOCIATED PRESS.

AND ULTIMATELY, THESE STUDIES FOUND THEIR WAY



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INTO THE TEXTBOOKS WHICH CALIFORNIA SCHOOL CHILDREN WERE OFTEN USING IN THE LATE 1950S OR THE EARLY 1960S, IN TERMS OF THE TEXTBOOK WRITERS INCORPORATING THIS KIND OF SCIENTIFIC RESEARCH WHEN THEY TALKED ABOUT THE RELATIONSHIP OF TOBACCO TO PUBLIC HEALTH.

SO HERE YOU HAVE A WAY IN WHICH NEW SCIENTIFIC RESEARCH, WHICH HAD A FAIRLY SMALL AUDIENCE IN 1950 WHEN IT BEGAN, REACHED A BROADER AUDIENCE BY THE END OF THE '50S, THE EARLY 1960S, BECAUSE THIS INFORMATION WAS THEN COMMUNICATED IN THE SCIENCE AND IN THE HEALTH CURRICULUM OF THE PUBLIC SCHOOLS IN CALIFORNIA.

Q. CAN YOU DEFINE -- IS THERE ANY KIND OF DEFINITION YOU CAN GIVE US FOR WHAT COMMON KNOWLEDGE IS OR COMMON EXPECTATIONS ARE AMONG A GROUP OF PEOPLE AT ANY PARTICULAR POINT IN TIME?

A. OH, THAT'S A DIFFICULT QUESTION. I GUESS I WOULD DEFINE COMMON AWARENESS OR COMMON KNOWLEDGE, COMMON UNDERSTANDING AS A SET OF SHARED ASSUMPTIONS, A SET OF

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19 SHARED BELIEFS, A SET OF SHARED ATTITUDES THAT APPEAR OVER
20 AND OVER AGAIN IN VARIOUS FORMS OF HUMAN COMMUNICATION.
21 IN OTHER WORDS, THAT YOU FIND THESE ATTITUDES
22 REFLECTED NOT ONLY IN NEWSPAPERS OR MAGAZINES OR IN THOSE
23 FORMS OF HUMAN COMMUNICATION, BUT YOU FIND THEM EXPRESSED
IN
24 SLANG TERMS, YOU FIND THEM EXPRESSED IN POPULAR SONGS, YOU
25 HAVE THEM EXPRESSED IN HUMOROUS COMMENTS THAT PEOPLE MIGHT
26 MAKE.
27 AND ALSO, IT SEEMS TO ME THAT COMMON
28 UNDERSTANDING HAS TO HAVE A LONGER LIFE THAN SIMPLY ONE

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1 GENERATION. IT HAS TO BE SOMETHING THAT'S PASSED ON FOR A
2 LONG PERIOD OF TIME, MAYBE FOR AT LEAST HALF A CENTURY OR
3 MAYBE EVEN FOR A LONGER PERIOD OF TIME. IT BECOMES A PART
4 OF SORT OF THE CULTURE, A PART OF THE COMMON DISCOURSE IN
A
5 SOCIETY.
6 Q. "DISCOURSE" MEANING WHAT?
7 A. WELL, HOW PEOPLE TALK ABOUT A PARTICULAR ISSUE
OR
8 A PARTICULAR PROBLEM, THE WAY IN WHICH THEY DESCRIBE IT,
THE
9 WAY IN WHICH THEY JOKE ABOUT IT, THE WAY IN WHICH THEY
TALK
10 ABOUT IT --
11 Q. WHEN YOU --
12 A. -- OR IN WHICH THEY WRITE ABOUT IT, TOO.
13 Q. WHEN YOU STUDY COMMON KNOWLEDGE OR COMMON
14 UNDERSTANDING, DO YOU STUDY ANY -- IS THE METHOD YOU WOULD
15 USE TO STUDY IT DIFFERENT THAN WHAT SOMEBODY WOULD USE TO
16 STUDY A MATTER OF SCIENTIFIC OR MEDICAL FACT?
17 A. WELL, YES. I MEAN, I THINK THE KINDS OF
SOURCES
18 THAT YOU WOULD LOOK AT WOULD BE RATHER DIFFERENT. YOU
HAVE
19 TO TAP INTO SOURCES THAT REFLECT A FAIRLY BROAD SPECTRUM
OF
20 POSSIBILITIES IN WHICH YOU HAVE SOME DEGREE OF CONFIDENCE
21 THAT MORE THAN A SMALL SLICE OF THE SOCIETY SHARES THIS
22 PARTICULAR UNDERSTANDING OR THIS PARTICULAR ASSUMPTION.
YOU
23 HAVE TO LOOK AT A MUCH BROADER RANGE OF SOURCES.
24 FOR EXAMPLE, I FOUND THAT A VERY IMPORTANT
SOURCE
25 FOR ME HAS BEEN TO LOOK AT THE LETTERS THAT PEOPLE WRITE
TO
26 THEIR CONGRESSMEN OR TO THEIR SENATORS, SAY, IN THE 1960S
OR
27 THE 1970S ABOUT TOBACCO, ABOUT CIGARETTES AND ABOUT PUBLIC
28 HEALTH. AND I READ A VERY BROAD SAMPLE OF LETTERS WRITTEN

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1 TO MEMBERS OF CONGRESS, TO MEMBERS OF THE UNITED STATES
2 SENATE.
3 AND THE LETTERS REFLECT A VERY BROAD, VERY DEEP
4 UNDERSTANDING ABOUT THE RELATIONSHIP OF CIGARETTES TO
5 DISEASE IN TERMS OF THE SPECIFIC ISSUES, SAY, OF LUNG
6 CANCER.
7 Q. HOW, DOCTOR, DO YOU, AS AN HISTORIAN, DETERMINE
8 WHETHER WHAT YOU ARE LOOKING AT REFLECTS A BROAD OR COMMON
9 UNDERSTANDING AS OPPOSED TO JUST A MORE NARROW OR PERHAPS

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MORE SPECIFIC?
A. WELL, AGAIN, I DON'T MEAN TO REPEAT MYSELF, BUT I THINK WHEN YOU FIND THAT THESE ATTITUDES OR ASSUMPTIONS ARE REPEATED AGAIN AND AGAIN IN DIFFERENT TYPES OF SOURCES, NOT ONLY, SAY, IN THE LETTERS THAT CONGRESSMEN RECEIVE, BUT, SAY, IN LETTERS TO THE EDITOR, OR IN OTHER TYPES OF DOCUMENTS, I THINK YOU BEGIN TO GET SOME DEGREE OF COMFORT THAT THESE VALUES ARE MORE WIDELY SHARED THAN SIMPLY AMONG A SMALL GROUP OF -- A SMALL SEGMENT OF THE POPULATION.
Q. LET ME HAND YOU WHAT WAS MARKED FOR IDENTIFICATION AS DEFENDANT'S 2398.
THE COURT: WHAT NUMBER?
MR. OHLEMEYER: 2398.
THE COURT: 2398?
MR. OHLEMEYER: YES.
Q. CAN YOU IDENTIFY THAT FOR US, DOCTOR?
A. YES. THIS IS A DOCUMENT THAT IS A FACSIMILE OF A VERY FAMOUS INDICTMENT OF TOBACCO BY KING JAMES THE 1ST OF ENGLAND THAT WAS --



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Q. WHO WAS -- I'M SORRY. WHEN WAS IT PUBLISHED?
A. I BELIEVE IT WAS PUBLISHED IN THE EARLY PART OF THE 17TH CENTURY, AROUND 1607, 1609, I BELIEVE IS THE CORRECT DATE.
Q. NOW, CAN SOMETHING PUBLISHED THAT LONG AGO CREATE EXPECTATIONS ON THE PART OF CONSUMERS IN MORE MODERN TIMES?
IN GENERAL, CAN SOMETHING PUBLISHED A LONG TIME AGO CREATE EXPECTATIONS?
A. THIS IS A VERY FAMOUS DENUNCIATION BY THE KING OF ENGLAND ABOUT THE USES OR THE HABITS THAT WERE BEGINNING TO BE PRESENT IN ENGLAND IN TERMS OF PEOPLE SMOKING TOBACCO. THE KING WAS VERY MUCH OPPOSED TO THAT.
AND HIS COUNTERBLAST HERE WAS AN INDICTMENT OF TOBACCO IN MANY OF THE SAME TERMS THAT WOULD LATER BE USED BY ANTI-CIGARETTE REFORMERS AND CRITICS IN THE 19TH CENTURY, IN THE 20TH CENTURY.
AND IN FACT, I THINK THAT HIS STATEMENTS WERE REPRODUCED IN 1964 IN THE FAMOUS PUBLICATION BY THE SURGEON GENERAL'S ADVISORY COMMITTEE ON SMOKING AND HEALTH IN 1964. I BELIEVE THAT DOCUMENT QUOTED THE KING OF ENGLAND FROM 1607 OR 1609.
SO IT'S AN EXAMPLE OF THE WAY IN WHICH CERTAIN BELIEFS OR ATTITUDES ABOUT TOBACCO HAVE A FAIRLY LONG TRADITION, A FAIRLY LONG PEDIGREE. THAT IS NOT SOMETHING THAT SIMPLY BEGAN YESTERDAY OR THE DAY BEFORE YESTERDAY. IT DOES REFLECT A VERY LONG HISTORY OF ANTI-TOBACCO SENTIMENT IN THE WESTERN WORLD.
Q. THROUGHOUT HISTORY, BETWEEN THE TIME KING JAMES

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PUBLISHED THAT AND THE SURGEON GENERAL PUBLISHED THE REPORT IN '64, HAD THE USE OF TOBACCO BEEN PUBLICLY CRITICIZED?

A. WELL, CERTAINLY IN THIS COUNTRY, IT HAD SOME VERY POWERFUL CRITICS, EVEN IN THE 19TH CENTURY. FOR EXAMPLE, DR. BENJAMIN RUSH, WHO WAS A VERY CLOSE FRIEND OF THOMAS JEFFERSON AND PROBABLY THE MOST FAMOUS AMERICAN PHYSICIAN PRIOR TO THE CIVIL WAR, DR. RUSH ALSO WROTE PAMPHLETS IN WHICH HE STRONGLY CONDEMNED THE USE OF TOBACCO.

AT THAT POINT, THEY WERE SPEAKING ABOUT PIPE TOBACCO, OF COURSE, AND SMOKING TOBACCO IN THOSE FORMS.

HE WAS A PHILADELPHIAN. HE WAS IN FACT ONE OF THE FOUNDING FATHERS, OR HE'S LOOKED UPON AS ONE OF THE FOUNDING FATHERS.

PRESIDENT JOHN QUINCY ADAMS -- I BELIEVE HE WAS THE FIFTH OR SIXTH PRESIDENT -- I SHOULD KNOW THAT; RIGHT? I DON'T KNOW WHETHER HE WAS THE FIFTH OR SIXTH PRESIDENT. JOHN QUINCY ADAMS ALSO -- IN CORRESPONDENCE AND OTHER WAYS, WHEN HE LEFT THE PRESIDENCY TO BECOME A MEMBER OF CONGRESS, JOHN QUINCY ADAMS BECAME A STRONG AND PASSIONATE CRITIC OF THE USE OF TOBACCO.

OLIVER WENDELL HOLMES, THE FATHER OF THE GREAT JUDGE. SO YOU HAVE A NUMBER OF VERY PROMINENT 19TH CENTURY AMERICANS WHO WERE STRONG CRITICS OF SMOKING, OF THE TOBACCO HABIT, EVEN BEFORE THE CIGARETTE BECAME THE PREDOMINANT FORM OF TOBACCO USE IN THE 20TH CENTURY.

Q. WAS THERE EVER A POINT IN TIME IN THIS STATE OR OTHERS WHERE THE SALE OF TOBACCO -- A BAN ON THE SALE OF TOBACCO WAS CONSIDERED?



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A. ARE YOU REFERRING TO CALIFORNIA SPECIFICALLY?

Q. CALIFORNIA OR OTHER STATES.

A. WELL, TO THE BEST OF MY RECOLLECTION, BETWEEN AROUND 1895 AND 1920, I BELIEVE, AT LEAST 16 STATES IN THE UNITED STATES DID PASS LAWS, STATUTES THAT PROHIBITED BOTH THE MANUFACTURE AND THE SALE OF CIGARETTES WITHIN THAT PARTICULAR JURISDICTION.

CALIFORNIA NEVER WENT THAT FAR. BUT CALIFORNIA DID HAVE AN EFFORT IN THE LEGISLATURE BETWEEN 1901 AND 1907 TO PASS A SIMILAR LAW, A LAW THAT WOULD HAVE PROHIBITED BOTH THE MANUFACTURE AND THE SALE OF CIGARETTES.

IN FACT, IT WAS INTRODUCED BY SENATOR SIMPSON FROM MY HOME TOWN OF PASADENA. HE WAS ABLE TO GET HIS BILL THROUGH THE STATE SENATE, BUT HE WAS NEVER ABLE TO GET IT THROUGH THE STATE ASSEMBLY, AND THUS IT NEVER BECAME LAW IN CALIFORNIA. BUT THERE WAS AN EFFORT AT LEAST TO DO THAT.

Q. DO LAWS LIKE THAT OR EFFORTS LIKE THAT CREATE EXPECTATIONS ABOUT A PRODUCT OR DO THEY REFLECT EXPECTATIONS ABOUT A PRODUCT?

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A. WELL, IT'S MY UNDERSTANDING AS A HISTORIAN THAT, GENERALLY, POLITICIANS TRY TO DO WHAT THEIR CONSTITUENTS ARE URGING THEM TO DO, OR AT LEAST, GENERALLY SPEAKING, THEY TRY TO FOLLOW THE WISHES OF THEIR CONSTITUENTS.

AND I WOULD PRESUME THAT SENATOR SIMPSON WAS RESPONDING TO SOME FAIRLY DEEPLY HELD FEELINGS IN CALIFORNIA ABOUT THE RELATIONSHIP OF CIGARETTES TO PUBLIC HEALTH.

SO IT WOULD APPEAR TO ME THAT LEGISLATION DOES TO SOME EXTENT REFLECT THE ATTITUDE, THE ASSUMPTIONS OF THE



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PUBLIC THAT BASICALLY ELECT PEOPLE LIKE SENATOR SIMPSON.

MS. CHABER: YOUR HONOR, I WOULD OBJECT. MOVE TO STRIKE AS LACKING FOUNDATION AND SPECULATION.

THE COURT: IF ALL YOU ARE DOING IS MAKING AN ASSUMPTION THERE, THEN I WOULD GRANT THAT.

IF YOU ARE BASING THIS ON SOMETHING MORE THAN ASSUMPTION, YOU NEED TO TELL US WHAT IT IS.

LET ME JUST DEFER MY RULING FOR A MINUTE. WHY DON'T YOU SEE IF YOU CAN LAY A FURTHER FOUNDATION OR NOT.

MR. OHLEMEYER: SURE.

Q. DOCTOR, YOU SAID THAT THAT'S AN ASSUMPTION YOU MAKE.

IS THAT AN ASSUMPTION THAT YOU MAKE BASED ON YOUR BACKGROUND, YOUR TRAINING AND YOUR EXPERIENCE AS A HISTORIAN AND YOUR STUDY OF THIS SUBJECT, OR IS IT JUST SOMETHING THAT YOU HAVE ASSUMED, AS I'VE ASKED YOU THE QUESTION?

MS. CHABER: YOUR HONOR, I OBJECT AGAIN, BECAUSE I THINK IT'S VAGUE AND AMBIGUOUS.

HE MADE TWO ASSUMPTIONS IN HIS QUESTION, ONE ABOUT ASSUMING.

MR. OHLEMEYER: LET ME WITHDRAW THE QUESTION AND ASK A NEW ONE.

THE COURT: ALL RIGHT.

MR. OHLEMEYER: Q. DOCTOR, BASED ON YOUR BACKGROUND, YOUR EDUCATION, YOUR EXPERIENCE AS A HISTORIAN, CAN YOU TELL US IN YOUR OPINION WHETHER, IN GENERAL --

THE COURT: LET ME JUST ASK YOU THIS: DO YOU WANT ME TO STRIKE THE LAST ANSWER AND JUST LET YOU START



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OVER?

MR. OHLEMEYER: THAT'S FINE.

THE COURT: THEN IT WILL BE CLEAR.

MR. OHLEMEYER: THAT'S FINE, JUDGE.

THE COURT: I'M GOING TO STRIKE THE LAST ANSWER, WITHOUT PREJUDICE TO YOUR PURSUING THIS INQUIRY, SO WE WON'T HAVE TO PARSE THE TESTIMONY ON THIS ISSUE OR ON THIS QUESTION. WE'LL START OVER, WITHOUT PREJUDICE.

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MR. OHLEMEYER: Q. MY QUESTION, DOCTOR, IS THIS: BASED ON YOUR TRAINING AND YOUR EXPERIENCE AS A HISTORIAN, AND BASED ON THE WORK YOU DID IN CONNECTION WITH THIS SUBJECT, THE SUBJECT OF SMOKING, CAN YOU TELL US, IN YOUR OPINION, WHETHER LAWS AND EFFORTS TO REGULATE OR TO PASS LAWS LIKE THE ONES YOU'VE DESCRIBED ARE REFLECTIONS OF COMMON EXPECTATIONS OR COMMON UNDERSTANDINGS ABOUT SMOKING, OR DO THEY CREATE COMMON EXPECTATIONS OR UNDERSTANDINGS ABOUT SMOKING?

A. WELL, I THINK THEY DO A LITTLE BIT OF BOTH. I WOULD NOT DRAW A VERY SHARP LINE THERE. TO RETURN, IF I MIGHT, TO THE SENATOR SIMPSON ISSUE, IN CALIFORNIA, AT THE TIME THAT HE WAS INTRODUCING THESE PIECES OF LITIGATION TO TRY TO MAKE -- TO TRY TO PROHIBIT THE MANUFACTURING AND THE SALE OF CIGARETTES, THERE WERE SOME VERY ACTIVE AND VERY VOCAL GROUPS IN CALIFORNIA THAT WERE PUSHING THAT KIND OF LEGISLATION.

FOR EXAMPLE, THE WOMEN'S CHRISTIAN TEMPERANCE UNION WAS EXTREMELY ACTIVE. SO TOO, THERE WAS A CALIFORNIA ANTI-CIGARETTE LEAGUE THAT HAD A NUMBER OF CHAPTERS



THROUGHOUT CALIFORNIA, AND IT WAS ACTIVELY ENCOURAGING THE LEGISLATURE IN CALIFORNIA TO PUSH SUCH LEGISLATION.

AND THIS IS TRUE IN OTHER STATES, LIKE WASHINGTON, OREGON, IOWA. AT LEAST 16 OTHER STATES DID IN FACT PASS LAWS PROHIBITING THE MANUFACTURE AND THE SALE OF CIGARETTES.

IN FACT, IN THE STATE OF WASHINGTON, THERE WAS A LAW THAT MADE POSSESSION OF CIGARETTES A MISDEMEANOR, AND SEVERAL PEOPLE WERE ACTUALLY PROSECUTED IN SEATTLE FOR POSSESSION OF CIGARETTES BEFORE THE FIRST WORLD WAR.

Q. DO YOU KNOW -- ARE YOU FAMILIAR WITH A MAN NAMED DAVID STARR JORDAN?

A. YES, I AM.

Q. WHO WAS OR IS DAVID STARR JORDAN?

A. DAVID STARR JORDAN WAS A BIOLOGIST AND AN EDUCATOR WHO WAS THE FIRST PRESIDENT OF STANFORD UNIVERSITY IN THE PERIOD FROM ROUGHLY THE MID-1890S UNTIL I BELIEVE 1913, 1914.

Q. AND WAS HE SOMEBODY WHO WAS IN A POSITION TO CREATE EXPECTATIONS ON THE PART OF INDIVIDUALS OR CONSUMERS ABOUT SMOKING?

A. WELL, DAVID STARR JORDAN WAS ONE OF THE MOST FAMOUS, IF YOU WILL, ONE OF THE MOST CELEBRATED AMERICAN EDUCATORS AT THE TURN OF THE CENTURY, AND THUS HE WAS A MEMBER OF A NUMBER OF VERY IMPORTANT ORGANIZATIONS.

AND THE MERE FACT THAT HE WAS THE PRESIDENT OF STANFORD UNIVERSITY ALSO WOULD HAVE GIVEN SOME CREDIBILITY AND SOME STATURE TO ANY STATEMENTS OR PRONOUNCEMENTS THAT HE



MIGHT HAVE MADE.

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Q. WAS HE SOMEBODY WHO MADE STATEMENTS OR PRONOUNCEMENTS AT THE TIME ABOUT SMOKING AND ITS RELATIONSHIP TO HEALTH?
A. INDEED HE DID. HE WAS A VERY OUTSPOKEN CRITIC OF THE SMOKING OF CIGARETTES, AND OF THEIR CONSEQUENCES, YES.
Q. WHAT ABOUT PEOPLE LIKE, SPECIFICALLY, THOMAS EDISON AND EVEN HENRY FORD? WERE THEY ALSO PEOPLE WHO WERE OUTSPOKEN CRITICS OF CIGARETTES OR CIGARETTE SMOKING?
A. YES, INDEED. HENRY FORD WAS THE MOST PROMINENT OR THE MOST FAMOUS AMERICAN WHO WAS A VERY STRONG CRITIC OF CIGARETTES, CERTAINLY DURING THE 1920S. HE WRITES A FAMOUS SERIES OF SHORT ARTICLES THAT ARE BROUGHT TOGETHER IN A BOOK ENTITLED "THE LITTLE WHITE SLAVER." AND IT WAS A BOOK THAT WAS WIDELY CIRCULATED IN ANTI-TOBACCO -- AMONG ANTI-TOBACCO GROUPS.
Q. HOW DO PEOPLE LIKE DAVID STARR JORDAN OR THOMAS EDISON OR HENRY FORD CREATE EXPECTATIONS ABOUT A PRODUCT LIKE CIGARETTES THAT ARE PASSED ALONG TO FUTURE GENERATIONS?
A. WELL, FOR EXAMPLE, WHEN HENRY FORD DESCRIBED, FOR EXAMPLE, CIGARETTES IN HIS BOOK, HE CALLED IT "THE LITTLE WHITE SLAVER." BY THAT, HE MEANT THAT PEOPLE, IF THEY BEGAN THIS HABIT, THEY COULD EVENTUALLY BECOME SLAVES TO IT. THEY COULD BECOME -- IN THE CURRENT PARLANCE, THEY COULD BECOME ADDICTED TO THIS PARTICULAR INDULGENCE.
AND I THINK THAT CONCEPT OF ONE'S ENSLAVEMENT TO TOBACCO, THAT HAS VERY OLD ROOTS, GOING BACK INTO THE 19TH CENTURY, IN THE SENSE THAT JOHN QUINCY ADAMS USED ALMOST THE



SAME KIND OF LANGUAGE TALKING ABOUT HIS ENSLAVEMENT TO THE PIPE.
AND CERTAINLY THEN, FORD'S ATTITUDES OR HIS BELIEFS WERE A CARRYOVER INTO A LATER GENERATION WITH THE CONCERN ABOUT THE HABIT-FORMING NATURE OF CIGARETTES AND THEIR POTENTIAL FOR ADDICTION.
Q. ARE YOU FAMILIAR WITH A MAN NAMED LESTER BRESLOW?
A. YES, I AM. HE'S ONE OF THE FIRST PEOPLE WHOSE BOOKS I READ WHEN I WAS UNDERTAKING THIS RESEARCH.
Q. WHAT ROLE DID LESTER BRESLOW PLAY WITH RESPECT TO THE ISSUE OF CIGARETTES IN CALIFORNIA AND OVER WHAT PERIOD OF TIME?
A. LESTER BRESLOW WAS AN EPIDEMIOLOGIST. THAT MEANS THAT HE STUDIED THE INCIDENCE OF VARIOUS DISEASES IN THE POPULATION, DISEASES LIKE SMALLPOX, TUBERCULOSIS, OR IN THIS CASE, HE WAS INTERESTED IN LUNG CANCER.
AND HE BECAME -- HE BECAME A MEMBER OF THE

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CALIFORNIA STATE DEPARTMENT OF PUBLIC HEALTH IN THE LATE 1940S, I BELIEVE IN 1947 OR 1949. AND LATER, IN THE 1950S AND '60S, HE BECAME -- I BELIEVE AT ONE POINT HE WAS THE DIRECTOR OF THE STATE DEPARTMENT OF PUBLIC HEALTH DURING THE TIME OF GOVERNOR PAT BROWN.

AND SO HE WAS VERY INFLUENTIAL OR SUCCESSFULLY ATTEMPTING TO MOBILIZE CALIFORNIA GOVERNMENT IN TERMS OF ANTI-SMOKING, ANTI-CIGARETTE EFFORTS IN THE 1950S, THE 1960S.

MR. OHLEMEYER: LET ME ASK YOU TO TAKE A LOOK AT WHAT WE MARKED FOR IDENTIFICATION AS DEFENDANT'S 2591, 2746





AND AS NEXT IN ORDER --

THE COURT: TATSUO, WHAT IS THE NEXT IN ORDER?

THE CLERK: DEFENDANT'S EXHIBIT 2821.

(DOCUMENTS MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBITS # 2581, 2746 AND 2821)

MR. OHLEMEYER: Q. DR. PARRISH, LET ME HAND YOU WHAT WE HAVE MARKED FOR IDENTIFICATION AS 2591, 2821 AND 2746.

AND LET ME ASK YOU: ARE THOSE ARTICLES FROM THE MAGAZINE KNOWN AS READER'S DIGEST?

A. YES. YES, THEY ARE. THEY'RE FROM READER'S DIGEST. I'D HAVE TO CHECK ON THE VARIOUS DATES HERE, BUT THEY APPEAR TO BE FROM ONE FROM 1938, ONE FROM, I GUESS, THE MID-1920S, AND ONE FROM, I BELIEVE, A LATER PERIOD OF THE 1950S OR THE 1960S.

Q. AND WHAT ROLE DOES A MAGAZINE LIKE READER'S DIGEST -- LET BE BACK UP AND ASK CAN YOU DESCRIBE FOR US, IN THE '50S AND THE '60S, WHAT KIND OF MAGAZINE READER'S DIGEST WAS.

A. WELL, READER'S DIGEST WAS ONE OF THE MOST WIDELY DISTRIBUTED, WIDELY SUBSCRIBED TO PUBLICATIONS GOING BACK INTO THE 1920S, '30S, '40S, AND '50S.

IT ATTEMPTED TO CONDENSE AND TO MAKE AVAILABLE IN VERY COMPACT FORM VARIOUS WORKS OF LITERATURE, VARIOUS WORKS OF SCIENTIFIC IMPORTANCE, SCIENTIFIC SIGNIFICANCE. I GUESS YOU COULD COMPARE IT SORT OF TO THE INTERNET OF THE PERIOD





BEFORE THE COMPUTER, OR BEFORE TELEVISION AND OTHER FORMS OF COMMUNICATION.

IT REALLY ATTEMPTED TO GIVE TO THE READER A VERY BROAD SAMPLE OF IMPORTANT LITERARY, SCIENTIFIC AND CULTURAL INFORMATION.

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Q. HOW WOULD A MAGAZINE LIKE READER'S DIGEST DURING THOSE TIME PERIODS CREATE OR REFLECT EXPECTATIONS ABOUT A PRODUCT SUCH AS CIGARETTES?

A. WELL, READER'S DIGEST WAS OWNED AND OPERATED BY THE WALLACE FAMILY. THE WALLACE FAMILY WERE VERY PASSIONATE CRITICS OF THE TOBACCO INDUSTRY, OF SMOKING. AND THEIR READER'S DIGEST WAS ONE OF THE FIRST MAJOR AMERICAN PUBLICATIONS TO ACTUALLY REPRINT AND TO CONDENSE AND TO PUBLISH MUCH OF THE SCIENTIFIC RESEARCH ABOUT THE RELATIONSHIP OF CIGARETTES TO LUNG CANCER, BEGINNING IN THE 1940S AND CERTAINLY IN THE 1950S.

SO THAT TO THAT EXTENT, IT WAS CREATING OR IT WAS HEIGHTENING TO SOME EXTENT PUBLIC AWARENESS OF THOSE RELATIONSHIPS BETWEEN SMOKING AND LUNG CANCER.

AT THE SAME TIME, IT WAS PROVIDING A FORUM FOR MANY OF THE CRITICS OF THE TOBACCO INDUSTRY, PEOPLE LIKE ROY NORR, N-O-R-R, WHO WROTE A FAMOUS READER'S DIGEST PIECE IN THE LATE 1950S ENTITLED "CANCER BY THE CARTON," WHICH HE BASED UPON MUCH OF THE SCIENTIFIC RESEARCH THAT HAD BEEN DONE BETWEEN 1950 AND 1957.

SO READER'S DIGEST WAS A VERY IMPORTANT SOURCE, A VERY IMPORTANT FORUM FOR COMMUNICATING IN A POPULAR FORM MUCH OF THE SCIENTIFIC RESEARCH THAT WOULD NOT OTHERWISE





HAVE BEEN AVAILABLE TO PEOPLE UNLESS THEY READ SOME OF THE MEDICAL JOURNALS, FOR EXAMPLE.

Q. CAN A MAGAZINE LIKE READER'S DIGEST CREATE EXPECTATIONS IN PEOPLE WHO DON'T READ IT?

A. WELL, CERTAINLY, IT HAD A VERY LARGE READERSHIP, AND I WOULD -- I WOULD THINK THAT EVEN SOMEONE WHO WOULD -- WHO HAD NOT READ A PARTICULAR ARTICLE MIGHT HAVE THE SUBSTANCE OF THAT ARTICLE COMMUNICATED IN SOME OTHER FORM, THROUGH A PARENT OR THROUGH A SPOUSE OR THROUGH A RELATIVE.

I WOULD ASSUME THAT ONE DOESN'T NECESSARILY HAVE TO HAVE READ A PARTICULAR PUBLICATION TO HAVE SOMEONE ELSE PERHAPS INFORM YOU ABOUT IT OR TO SUGGEST TO YOU THAT THAT ARTICLE IS VERY IMPORTANT.

Q. LET ME ASK YOU --

MS. CHABER: Q. YOUR HONOR, I WOULD OBJECT AGAIN, AND MOVE TO STRIKE. IT'S BASED ON SPECULATION, LACKS FOUNDATION.

THE COURT: THE ONLY TIME HE SAID THAT IS IN THE LAST SENTENCE, WHERE HE SAID "I WOULD ASSUME THAT ONE DOESN'T NECESSARILY."

MS. CHABER: AND HE SAID "MAYBE" MANY TIMES THROUGHOUT THAT SENTENCE. "MAYBE SOMEBODY MIGHT HAVE READ IT."

MR. OHLEMEYER: LET ME WITHDRAW THE QUESTION. YOU CAN STRIKE THE ANSWER.

THE COURT: WITH THAT OFFER, I WILL STRIKE THE

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ANSWER.
MR. OHLEMEYER: Q. I DON'T WANT YOU TO MAKE

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ASSUMPTIONS THAT AREN'T BASED ON -- IN ANY QUESTION I ASK YOU TODAY, I DON'T WANT YOU TO MAKE ASSUMPTIONS THAT AREN'T REALLY BASED ON YOUR BACKGROUND, YOUR EDUCATION, YOUR EXPERIENCE AND THE WORK YOU'VE DONE IN CONNECTION WITH THIS SUBJECT.
SO MY QUESTION TO YOU IS: AS A HISTORIAN WHO HAS STUDIED MATTERS OF COMMON KNOWLEDGE, AND SPECIFICALLY STUDIED THE ISSUE OF SMOKING AND ITS EXPECTATIONS AMONG ORDINARY PEOPLE FOR A NUMBER OF YEARS, ARE THINGS THAT ARE WRITTEN ABOUT SMOKING IN MAGAZINES SUCH AS READER'S DIGEST CAPABLE OF CREATING EXPECTATIONS IN PEOPLE WHO HAVEN'T READ THE SPECIFIC ARTICLE IN THE MAGAZINE?
A. I WOULD ANSWER YES.
Q. IN WHAT WAY?
A. WELL, BECAUSE IT'S MY RECOLLECTION THAT I HAVE SEEN OTHER PEOPLE QUOTING FROM THESE VARIOUS READER'S DIGEST ARTICLES. EITHER, FOR EXAMPLE, IN LETTERS TO THE EDITOR OR IN VARIOUS HEALTH COLUMNS THAT NEWSPAPERS FREQUENTLY RAN. WHERE, FOR EXAMPLE, A DOCTOR WOULD GIVE ADVICE TO PEOPLE ABOUT SMOKING, THERE WOULD BE A REFERENCE TO A READER'S DIGEST ARTICLE.
ONE OF THE ARTICLES THAT YOU HAVE SHOWN HERE IS A VERY FAMOUS ONE THAT WAS WRITTEN BY STEWART ALSOP.
Q. WHAT IS THE EXHIBIT NUMBER ON THAT?
A. EXHIBIT 2591.
Q. TELL US WHO STEWART ALSOP WAS.
A. WELL, STEWART ALSOP WAS A VERY PROMINENT WASHINGTON JOURNALIST IN THE 1950S, THE 1960S. HE

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UNFORTUNATELY DIED OF LUNG CANCER.
AND THIS PARTICULAR ARTICLE WAS A PIECE ABOUT HOW HE STOPPED SMOKING AND ABOUT THE DIFFICULTIES THAT HE HAD IN TERMS OF BREAKING THAT HABIT, OR WHAT HE CALLED HIS LONG STRUGGLE WITH "MY NICOTINE-STAINED SOUL." AND WHAT'S INTERESTING ABOUT THIS ARTICLE --
Q. DOCTOR, ALL I WANT -- YOU'VE GOT TO ANSWER THE QUESTIONS I ASK YOU. OKAY?
A. YES.
Q. AND SO CAN YOU COMPARE STEWART ALSOP TO SOMEBODY WHO MIGHT BE MORE FAMILIAR TO THOSE OF US WHO READ OR WATCH TELEVISION?
A. STEWART ALSOP WAS A COLUMNIST WHO WROTE REGULARLY IN MAJOR SYNDICATED NEWSPAPERS AND WOULD BE COMPARABLE TO SOMEONE LIKE HERB CAEN. MAYBE SAN FRANCISCANS WOULD KNOW HERB CAEN OR ANTHONY LEWIS OR WALTER LIPPMANN. HE WAS A VERY PROMINENT JOURNALIST AND COLUMNIST.

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Q. IN THE SAME WAY, THAT IS, AS PEOPLE LIKE DAVID STARR JORDAN OR THOMAS EDISON OR HENRY FORD, DO COLUMNISTS LIKE THAT CREATE EXPECTATIONS ON THE PART OF ORDINARY PEOPLE ABOUT THE SUBJECTS THEY WRITE ABOUT?

A. WELL, I THINK THEY DO, YES. AND THEY REINFORCE THE ATTITUDES AND BELIEFS PEOPLE ALREADY HAVE.

THAT IS WHY I WAS REFERRING TO THE IMPORTANCE OF THE STEWART ALSOP DOCUMENT.

MR. OHLEMEYER: DOCTOR, LET ME HAND YOU WHAT WE'VE JUST MARKED FOR IDENTIFICATION AS DEFENDANT'S 2422.

(DOCUMENT MORE PARTICULARLY



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DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBIT # 2422)

MS. CHABER: WHAT IS THAT, DOCTOR?

MR. OHLEMEYER: IT'S DEFENDANT'S 2422.

THE COURT: TATSUO, DO YOU HAVE A COPY?

(DOCUMENT PRODUCED)

THE COURT: THANK YOU.

THE WITNESS: THIS EXHIBIT THAT YOU'VE HANDED ME, EXHIBIT 2422, IS AN ADVERTISEMENT FOR A POPULAR REMEDY FOR THE CURE OF THE TOBACCO HABIT THAT APPEARED IN THE SEARS AND ROEBUCK CATALOG IN THE SPRING EDITION OF 1902.

Q. WHAT, IF ANYTHING, DOES AN AD LIKE THAT IN A SOURCE LIKE THAT AT A TIME LIKE THAT TELL YOU ABOUT CONSUMER EXPECTATIONS ASSOCIATED WITH CIGARETTE SMOKING?

A. WELL, ASIDE FROM THE BIBLE, I THINK THAT THE SEARS AND ROEBUCK CATALOG WAS PROBABLY ONE OF THE MOST WIDELY DISTRIBUTED AND WIDELY READ PUBLICATIONS IN AMERICA, CERTAINLY IN THE MIDDLE WEST.

AND THE FACT THAT THIS ADVERTISEMENT, WHICH IS RELATED TO THE ISSUE OF THE TOBACCO HABIT OR TOBACCO ADDICTION, THAT IT APPEARS IN 1902, ALMOST AT THE DAWN OF WHEN CIGARETTES WERE BECOMING THE MOST PERVASIVE AND POPULAR FORM OF CIGARETTE OR OF TOBACCO CONSUMPTION, SUGGESTS TO ME THAT ALREADY, IN 1902, THERE WAS SOME CONSIDERABLE DEGREE OF PUBLIC ASSUMPTION ABOUT THE ADDICTIVENESS OR ABOUT THE DIFFICULTY OF STOPPING SMOKING.

Q. I WANT TO TALK TO YOU NOW, DOCTOR, ABOUT WHAT YOU



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DESCRIBED EARLIER IN TERMS OF POPULAR CULTURE, MUSIC, FICTION AND HUMOR, SLANG TERMS, THINGS LIKE THAT.

WHAT ROLE OR WHAT EFFECT DO THOSE FORMS OF CULTURE HAVE ON CREATING OR SPREADING EXPECTATIONS OR COMMON KNOWLEDGE ABOUT A PRODUCT?

A. YOU'RE REFERRING TO THINGS LIKE SONGS, HUMOR?

Q. CORRECT. SLANG TERMS, THOSE KINDS OF THINGS.

A. OTHER TERMS OF POPULAR MEANING.

I THINK, IN CERTAIN CASES, THEY REFLECT OFTENTIMES THE ANXIETY THAT PEOPLE HAVE ABOUT A PARTICULAR

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BEHAVIOR OR A PARTICULAR PRACTICE.
HUMOR CAN BE A WAY IN WHICH WE -- IN WHICH WE BOTH CONFRONT AN ANXIETY AND TRY TO ALLEVIATE THAT ANXIETY.
Q. WHAT ROLE DOES COMMON KNOWLEDGE PLAY IN THE CREATION OF HUMOR OR POPULAR CULTURE?
A. COULD YOU RESTATE THE QUESTION, PLEASE.
Q. WHAT IS IT ABOUT -- HOW DOES COMMON KNOWLEDGE RELATE TO HUMOR OR SLANG WITH RESPECT TO THE SUBJECT AT ISSUE, WHETHER IT'S CIGARETTES OR WHETHER IT'S CARCINOMA OR WHETHER IT'S ANYTHING ELSE?
A. WELL, I THINK, FOR EXAMPLE, HUMOR -- IN MANY CASES, SOME OF THE MOST HUMOROUS THINGS OR HUMOROUS STATEMENTS THAT HAVE BEEN MADE, FOR EXAMPLE, ABOUT CIGARETTES AND TOBACCO DO REFLECT THAT SENSE OF ANXIETY.
I'M REFERRING -- I'M THINKING ABOUT, FOR EXAMPLE, MARK TWAIN'S FAMOUS COMMENT WHEN HE WAS ASKED ABOUT THE DIFFICULTY OF STOPPING SMOKING, AND HE SAID: "STOPPING SMOKING, IT'S NOT VERY DIFFICULT. I KNOW BECAUSE I'VE DONE



IT HUNDREDS OF TIMES."
AND BY THAT HUMOROUS REMARK, HE MEANT TO REFLECT -- I THINK HE WAS REFLECTING UPON THE EXTENT TO WHICH THERE WAS A FAIRLY BROAD SENSE IN THE PUBLIC ABOUT THE DIFFICULTY THAT PEOPLE WOULD HAVE.
MR. OHLEMEYER: LET ME HAND YOU WHAT WE'VE MARKED AS DEFENDANT'S 2518 FOR IDENTIFICATION.
(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANT'S EXHIBIT # 2518)
MS. CHABER: Q. THAT'S SHEET MUSIC FOR A SONG; RIGHT, DOCTOR?
A. MM-HMM.
Q. CAN YOU TELL US SPECIFICALLY IS THAT SONG "SMOKE, SMOKE, SMOKE THAT CIGARETTE"?
A. YES.
Q. WAS THAT A POPULAR SONG AT A PARTICULAR POINT IN TIME?
A. THIS IS EXHIBIT 2518, "SMOKE, SMOKE, SMOKE THAT CIGARETTE." IT'S A SONG THAT WAS WRITTEN BY MERLE TRAVIS AND IT WAS RECORDED BY TEX WILLIAMS.
AND IT'S MY RECOLLECTION THAT THIS SONG ROCKETED TO THE TOP OF THE CHARTS, SUCH AS THEY WERE, IN THE LATE 1940S, I BELIEVE, 1947 OR 1948. THE LYRICS ARE:
"SMOKE, SMOKE, SMOKE THAT CIGARETTE. SMOKE, SMOKE, SMOKE YOURSELF TO DEATH."
AND IT BECAME ONE OF THE MOST POPULAR SONGS IN



THE UNITED STATES IN THE LATE 1940S.
Q. DO POPULAR SONGS HAVE A POTENTIAL TO CREATE EXPECTATIONS OR A COMMON UNDERSTANDING ABOUT PRODUCTS?
A. WELL, WHAT'S INTERESTING ABOUT THIS SONG IS

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THAT
IT ROCKETED TO THE TOP OF THE CHARTS IN THE LATE 1940S, AT
ABOUT THE SAME TIME, FOR EXAMPLE, THAT THE GALLUP POLL
BEGAN
TO ASK AMERICANS VERY POINTED QUESTIONS ABOUT THE
RELATIONSHIP BETWEEN SMOKING AND HEALTH.
IF I RECALL, I THINK IN 1949, ONE OF THE FIRST
GALLUP POLLS ASKED --
MS. CHABER: YOUR HONOR, I'M GOING TO OBJECT.
I
THINK IT'S BEYOND THE SCOPE OF THE QUESTION.
THE COURT: YOU CAN ASK THE NEXT QUESTION.
MR. OHLEMEYER: Q. DR. PARRISH, WHAT ABOUT
SLANG TERMS THAT REFER TO CIGARETTES, SUCH AS COFFIN
NAILS?
IS THAT A TERM THAT HAS SOME HISTORY TO IT?
A. I BELIEVE THAT THAT TERM "COFFIN NAILS,"
REFERRING TO CIGARETTES, MAKES ITS APPEARANCE IN THE LATE
19TH CENTURY IN SEVERAL PUBLICATIONS. I BELIEVE I'VE SEEN
IT AT LEAST IN NEWSPAPERS AND OTHER WRITTEN FORMS IN THE
LATE 19TH CENTURY.
Q. AND IS IT A TERM THAT ONE CAN FIND REFERENCE TO
IN MORE MODERN SOURCES OF INFORMATION?
A. WELL, YOU FIND THE TERM "COFFIN NAILS" USED
OFTEN
IN AMERICAN MOTION PICTURES IN THE 1940S, THE 1950S. THE
MOST FAMOUS EXAMPLE IS, OF COURSE, THE FILM WITH FRANK
SINATRA AND MONTGOMERY CLIFT BASED ON THE JAMES JONES
NOVEL.
Q. "FROM HERE TO ETERNITY"?

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A. "FROM HERE TO ETERNITY," YES, WHERE FRANK
SINATRA
COMES INTO THE BAR AND HE TURNS TO MONTGOMERY CLIFT AND
SAYS, "GIVE ME A NAIL, PRU. I'M HUNGRY," HE SAYS, "I'M
HUNGRY FOR A NAIL."
SO IT DOES APPEAR IN MORE CONTEMPORARY FORMS.
MR. OHLEMEYER: LET ME SHOW YOU WHAT WE HAVE
MARKED AS EXHIBITS 2410, 2562 AND 2586.
THE COURT: DO THESE HAVE HOLES ON THEM? THE
LAST COUPLE DID NOT.
MR. OHLEMEYER: I'M SORRY, YOUR HONOR. THESE
DO.
(DOCUMENTS MORE PARTICULARLY
DESCRIBED IN THE INDEX MARKED
FOR IDENTIFICATION DEFENDANT'S
EXHIBITS # 2410, 2562 AND 2586)
MR. OHLEMEYER: Q. DO THOSE EXHIBITS CONTAIN
REFERENCES TO THE TERM "COFFIN NAILS"?
A. YES, THEY DO. LET ME JUST REFRESH MY
RECOLLECTION.
(EXAMINING) YES, THEY DO.
Q. AND EXHIBITS 2586 AND 2562 ARE FROM WHAT
MAGAZINE?
A. THEY ARE FROM LIFE MAGAZINE.
Q. IN THE 1950S; CORRECT?
A. YES. THAT WOULD BE ABOUT THE TIME THAT "FROM
HERE TO ETERNITY," FOR EXAMPLE, WAS GARNERING ALL THOSE
ACADEMY AWARDS.
Q. LET ME ASK YOU, DR. PARRISH, ABOUT NEWSPAPERS,

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AND IN PARTICULAR, WHAT YOU MIGHT REFER TO AS FRONT-PAGE NEWS.

CAN YOU TELL US WHAT ROLE FRONT-PAGE NEWS PLAYS IN CREATING EXPECTATIONS, AND SPECIFICALLY, WITH RESPECT
--
LET ME JUST ASK THIS QUESTION: WHAT ROLE DOES FRONT-PAGE NEWS PLAY IN CREATING CONSUMER EXPECTATIONS?

A. WELL, I THINK FRONT-PAGE NEWS GALVANIZES PEOPLE'S ATTENTION. IT RIVETS PEOPLE'S ATTENTION UPON A PARTICULAR PUBLIC ISSUE, WHETHER IT HAPPENS TO BE HEALTH AND CIGARETTES OR WHETHER IT HAPPENS TO BE SOME OTHER ISSUE.

IT'S VERY RIVETING. IT DEMANDS YOUR ATTENTION.

Q. FROM TIME TO TIME, HAS THE SUBJECT OF CIGARETTE SMOKING AND HEALTH BEEN FRONT-PAGE NEWS IN THIS AND OTHER STATES?

A. ABSOLUTELY.

Q. WITH RESPECT TO 1964 AND THE SURGEON GENERAL'S REPORT, WAS THAT A MATTER OF FRONT-PAGE NEWS IN THIS STATE?

A. YES, INDEED. IT WAS IN EVERY MAJOR NEWSPAPER THAT I'VE LOOKED AT, THE SACRAMENTO BEE, THE L.A. TIMES, THE SAN FRANCISCO CHRONICLE, THE SAN DIEGO UNION.

INDEED, IT WAS FRONT-PAGE NEWS. IT WAS ONE OF THE MOST WIDELY -- IT WAS ONE OF MOST WIDELY PUBLICIZED HEALTH STORIES OR PUBLIC HEALTH STORIES OF THE 20TH CENTURY.

MR. OHLEMEYER: LET ME SHOW YOU WHAT WE HAVE MARKED FOR IDENTIFICATION AS DEFENDANT'S 2677, 2724, 2783, 2732, 2722, 2727, 2732.

(DOCUMENTS MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED



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FOR IDENTIFICATION DEFENDANT'S EXHIBITS # 2677, 2724, 2783, 2732, 2727)

MS. CHABER: I HAVE 2732 DOWN HERE TWICE.

THE COURT: CAN YOU GIVE US THOSE NUMBERS AGAIN. 2677; RIGHT?

MR. OHLEMEYER: AND 2724.

THE COURT: RIGHT.

MR. OHLEMEYER: 2783.

THE COURT: RIGHT.

THEN I HAVE 2732 AS THE NEXT ONE.

MR. OHLEMEYER: I SHOW 2722. I'M SORRY.

THE COURT: OH, 2722.

MR. OHLEMEYER: I'M SORRY.

THE COURT: AND THEN THE LAST TWO ARE 2727 AND 2732?

THE CLERK: I HAVE THE SAME NUMBER.

MR. OHLEMEYER: I MISNUMBERED ONE.

RIGHT NOW, JUDGE, LET ME --

THE COURT: LET'S START OVER WITH THE ONES THAT YOU ARE GOING TO MARK.

MR. OHLEMEYER: 2677.

THE COURT: ALL RIGHT.

MR. OHLEMEYER: 2724.

THE COURT: OKAY.

MR. OHLEMEYER: 2783.

THE COURT: ALL RIGHT.

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MR. OHLEMEYER: 2722.
THE COURT: ALL RIGHT.

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MR. OHLEMEYER: I SEE THE PROBLEM. 2727.
THE COURT: OKAY.
MR. OHLEMEYER: 2732.
THE COURT: ALL RIGHT.
MR. OHLEMEYER: AND 2704.
THE COURT: ALL RIGHT. MY MISTAKE.
MS. CHABER: I DON'T HAVE ALL OF THOSE. I HAVE SOME.
(COUNSEL CONFER OFF THE RECORD)
MR. OHLEMEYER: Q. I'M JUST GOING TO HAND THESE TO YOU AS A GROUP, DOCTOR, AND JUST ASK YOU, IN GENERAL TERMS: ARE THESE REPRESENTATIVE OF THE TYPES OF NEWSPAPER ARTICLES THAT ONE MIGHT FIND IN NEWSPAPERS ON THE SUBJECT OF SMOKING AND HEALTH DURING THE 1960S IN THIS STATE?
A. (EXAMINING) YES.
Q. AND DO YOU HAVE 2704?
A. YES.
Q. DOCTOR, LET ME ASK YOU ABOUT THE SCHOOLS SPECIFICALLY.
WHAT ROLE DO SCHOOLS AND DID SCHOOLS IN THIS STATE PLAY IN CREATING OR SPREADING EXPECTATIONS OR COMMON KNOWLEDGE ABOUT SMOKING?
A. WELL, FROM THE BEGINNING IN CALIFORNIA -- BY THAT, I MEAN THE LATE 19TH CENTURY -- THE STATE OF CALIFORNIA MADE A VERY -- A CONSIDERABLE EFFORT WITH RESPECT TO HEALTH EDUCATION IN THE SCHOOLS OF CALIFORNIA WITH REGARD TO TOBACCO PRODUCTS, AND SPECIFICALLY, AFTER THE TURN OF THE

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CENTURY, WITH REGARD TO CIGARETTES.
IN FACT, IT'S MY RECOLLECTION THAT THE FIRST SUBJECT -- THE FIRST SUBJECT THAT WAS MANDATED BY THE LEGISLATURE TO BE TAUGHT OR IN WHICH INSTRUCTION WAS TO BE OFFERED TO STUDENTS IN THE CALIFORNIA SCHOOLS WAS THE TOPIC OF HEALTH EDUCATION WITH RESPECT TO ALCOHOL, NARCOTICS AND TOBACCO. I THINK THAT IS IN THE 1880S.
SO FROM THE VERY BEGINNING, MUCH OF THE EFFORT OF CALIFORNIA EDUCATORS IN TERMS OF THE ROLE OF GOVERNMENT HAS BEEN DIRECTED AT TRYING TO EDUCATE YOUNG PEOPLE ABOUT THE HEALTH HAZARDS OF TOBACCO.
Q. AND DID CALIFORNIA HAVE A SPECIFIC CURRICULUM OR SPECIFIC THINGS THAT WERE TO BE TAUGHT IN SCHOOLS AT VARIOUS POINTS IN TIME?
LET ME REPHRASE THE QUESTION. THAT'S A SLOPPY QUESTION.
WERE THERE STATE-SPONSORED OR STATE-CREATED CURRICULUM OR INFORMATION THAT WAS TO BE USED IN CONNECTION

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19 WITH THAT EFFORT?
20 A. WELL, YES. BEGINNING IN THE 1920S, THE 1930S,
21 THE STATE DEPARTMENT OF EDUCATION IN CALIFORNIA DID
DEVELOP
22 IN MANY CASES A SUGGESTED CURRICULUM, GUIDES WITH RESPECT
TO
23 THE TEACHING OF HEALTH AND HYGIENE IN THE CALIFORNIA
24 SCHOOLS.
25 AND MUCH OF THAT CURRICULUM FROM THE STATE
26 DEPARTMENT OF EDUCATION DID FOCUS UPON THE ISSUE OF
TOBACCO,
27 ALCOHOL AND DRUGS.
28 Q. AND DID THAT CONTINUE THROUGHOUT THE '50S AND
THE



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1 '60S?
2 A. OH, IT BECAME EVEN MORE INTENSIVE IN THE 1950S
3 AND THE 1960S.
4 BUT IN ADDITION, OF COURSE, TO THE ROLE OF
5 GOVERNMENT IN CALIFORNIA, YOU HAD MANY PRIVATE VOLUNTARY
6 ORGANIZATIONS THAT ALSO DIRECTED MOST OF THEIR PROGRAMS AT
7 YOUNG PEOPLE IN THE PUBLIC SCHOOLS IN CALIFORNIA.
8 Q. DOCTOR, BASED ON THE INFORMATION YOU REVIEWED
AND
9 THE STUDY YOU'VE MADE OF THE SUBJECT, IN YOUR OPINION,
WERE
10 THE RISKS ASSOCIATED WITH SMOKING MATTERS OF COMMON
11 KNOWLEDGE AMONG ORDINARY CONSUMERS IN THIS STATE OVER THE
12 PAST 50 YEARS?
13 A. YES.
14 MR. OHLEMEYER: THAT'S ALL THE QUESTIONS I
HAVE,
15 YOUR HONOR. THANK YOU.
16 THE COURT: OKAY.
17 THE WITNESS: MAY I GO TO THE RESTROOM?
18 THE COURT: YES. WE ARE GOING TO TAKE A
19 RECESS.
20 JURORS, LET ME JUST -- I MEAN, COUNSEL, LET ME
21 JUST HAVE A BRIEF SIDEBAR WITH YOU ON THE SCHEDULE SO WE
CAN
22 TAKE A RECESS.
23 AND DOCTOR, YOU MAY STEP DOWN, IF YOU WISH.
24 THE WITNESS: THANK YOU.
25 (COURT AND COUNSEL CONFER OUTSIDE
26 THE PRESENCE OF THE JURY)
27 THE COURT: OKAY. JURORS, THE BEST ESTIMATE
28 THAT I CAN GET FROM COUNSEL IS LET'S DO WHAT I SUGGESTED.



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1 THEY THINK THAT WE'LL BE DONE MAYBE EVEN WELL BEFORE 1:00
2 O'CLOCK, MAYBE AROUND 12:30 OR SO, BUT I'M NOT SURE.
3 WHY DON'T YOU, IF YOU ARE GOING TO MAKE SOME
4 ARRANGEMENTS, IF YOU MAKE THEM FOR 1:00 O'CLOCK, I THINK
5 YOU'LL BE SAFE. EVERYBODY WOULD AGREE, I THINK.
6 BUT IN ANY EVENT, WE NEED YOU TO STAY UNTIL WE
7 GET IT DONE, SO WE CAN START OUT TOMORROW FRESH WITH THE
8 INSTRUCTIONS.
9 SO WHY DON'T YOU GO AHEAD AND POSTPONE YOUR
LUNCH
10 UNTIL PROBABLY SOMETIME AROUND 1:00. I THINK THAT IS
FAIRLY
11 SAFE.

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PLEASE CONTINUE TO FOLLOW THE ADMONITION DURING THE RECESS. LET'S TAKE A 20-MINUTE RECESS UNTIL 25 MINUTES TO 12:00.

(RECESS TAKEN FROM 11:15 TO 11:37 A.M.)

THE COURT: OKAY. MS. CHABER.

MS. CHABER: THANK YOU, YOUR HONOR.

THE COURT: I HAVE BEEN ADVISED THAT THE JUROR CHANGED HER SCHEDULE, SO WE'RE GOING TO GO PAST 12:00 O'CLOCK.

MS. CHABER: OKAY. GREAT. I WILL TRY TO MAKE IT WITHIN REASON.

CROSS-EXAMINATION

BY MS. CHABER: Q. GOOD MORNING, I GUESS, STILL, DR. PARRISH.

YOU'RE NOT A PSYCHOLOGIST?

A. NO, I'M NOT.



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Q. AND YOU'RE NOT A SOCIOLOGIST?

A. NO.

Q. AND YOU'RE NOT AN EXPERT ON THE PSYCHOLOGY OF HUMAN COMMUNICATION, ARE YOU?

A. NO, I'M NOT.

Q. YOU ARE NOT AN EXPERT ON MARKETING OR ADVERTISING?

A. THAT'S CORRECT. I'M NOT.

Q. AND THAT WOULD BE TRUE, THAT YOU ARE NOT AN EXPERT THEN ON THE EFFECT OF MARKETING OR ADVERTISING ON CONSUMER EXPECTATIONS?

A. I HAVE NO EXPERTISE IN THOSE AREAS. THAT'S CORRECT.

Q. AND YOU HAVE NOT PUBLISHED, TO THIS TIME, ANY BOOKS OR ARTICLES ON CONSUMER EXPECTATIONS WITH RESPECT TO SMOKING?

A. THAT'S CORRECT. I HAVEN'T PUBLISHED IN THAT AREA.

Q. AND PRIOR TO THE TIME YOU WERE FIRST CONTACTED BY ATTORNEYS REPRESENTING CIGARETTE COMPANIES, YOU NEVER PUBLISHED ANYTHING ABOUT TOBACCO; CORRECT?

A. THAT'S CORRECT.

Q. AND THIS IS NOT THE FIRST TIME YOU HAVE CONSULTED WITH THE ATTORNEYS REPRESENTING CIGARETTE COMPANIES, IS IT?

A. COULD YOU EXPLAIN TO ME WHAT YOU MEAN BY "CONSULTING"?

Q. LET ME START WITH A NEW QUESTION AND MAYBE THAT WILL MAKE IT EASIER.



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YOU HAVE ON OTHER OCCASIONS LOOKED AT THIS ISSUE OF WHAT CONSUMERS PURPORTEDLY KNEW ABOUT THE HAZARDS OF SMOKING?

A. YES, I HAVE.

Q. AND YOU DID THAT AT THE BEHEST, AT THE REQUEST OF ATTORNEYS REPRESENTING CIGARETTE COMPANIES?

A. THAT'S CORRECT.

Q. AND YOU'VE DONE IT IN STATES OTHER THAN

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CALIFORNIA; CORRECT?
A. YES, I HAVE.
Q. CAN YOU NAME THE STATES THAT YOU'VE LOOKED AT THIS ISSUE?
A. WELL, I LOOKED IN SPECIFIC STATES, SUCH AS PENNSYLVANIA, NEW YORK, TEXAS, CALIFORNIA, OF COURSE, MINNESOTA. WASHINGTON STATE, AND ALSO OREGON, IN ADDITION TO, OF COURSE, THE FEDERAL GOVERNMENT.
Q. AND NOW, YOU'VE NEVER PROVIDED ANY -- YOU'VE NEVER BEEN, RATHER, PROVIDED WITH ANY DOCUMENTS FROM THE DEFENDANTS WITH RESPECT TO ANY INFORMATION THAT THEY HAD ABOUT CONSUMER KNOWLEDGE; IS THAT CORRECT?
A. ASIDE FROM THE DOCUMENTS THAT WERE GIVEN TO ME THIS MORNING BY MR. OHLEMEYER HERE, RIGHT.
Q. IN OTHER WORDS, YOU HAVE NOT LOOKED AT ANY PHILIP MORRIS DOCUMENTS, FOR EXAMPLE, ON THEIR INFORMATION AS TO WHAT CONSUMERS KNEW?
A. BRIEFLY, WHEN I WAS DEPOSED IN A CASE LAST YEAR, I WAS BRIEFLY SHOWN BY THE PLAINTIFFS' ATTORNEYS A STACK OF DOCUMENTS THAT WERE SUPPOSEDLY FROM THE SO-CALLED MINNESOTA





ARCHIVE THAT RELATED OR THAT WERE A PART OF THE SO-CALLED COMPANY DOCUMENTS, YES (INDICATING).
Q. AND THAT WAS IN THE COURSE OF A DEPOSITION WHERE SOMEBODY WAS SAYING TO YOU: "HERE, DOCTOR, HAVE YOU SEEN THIS DOCUMENT BEFORE?"
A. THAT'S CORRECT.
Q. OKAY. AND THOSE WERE NOT DOCUMENTS YOU HAD SEEN BEFORE THAT DEPOSITION?
A. THAT'S CORRECT.
Q. AND THERE WERE NO DOCUMENTS OTHER THAN WHAT I THINK YOU'VE INDICATED WAS PROVIDED TODAY THAT YOU'VE BEEN PROVIDED WITH BY PHILIP MORRIS WITH RESPECT TO THEIR OWN COMPANY INFORMATION?
A. THAT'S CORRECT.
Q. AND SINCE YOU MENTIONED THE MINNESOTA DEPOSITORY, THE MINNESOTA DEPOSITORY HAS HUNDREDS OF THOUSANDS OF DOCUMENTS ON FILE THERE, DOESN'T IT?
A. I'LL HAVE TO TAKE YOUR WORD FOR IT. I HAVEN'T GONE THROUGH THAT DEPOSITORY.
Q. YOU HAVE NEVER, IN THE COURSE OF TRYING TO DETERMINE WHAT CONSUMERS KNEW AT ANY POINT IN TIME, HAVE GONE TO LOOK AT THE DOCUMENTS THAT ARE IN THE DEPOSITORY IN MINNESOTA WITH RESPECT TO TOBACCO?
A. THAT'S CORRECT. I'VE LOOKED AT DOCUMENTS ONLY THAT WERE IN THE PUBLIC DOMAIN, THAT THE PUBLIC WOULD HAVE HAD ACCESS TO.
Q. WELL, YOU DID LOOK AT A COUPLE OF PRIVATE COLLECTIONS, DID YOU NOT, OF DOCUMENTS?





A. WHAT DO YOU MEAN BY "PRIVATE COLLECTIONS"?
Q. WELL, COLLECTIONS THAT BELONGED TO AN INDIVIDUAL

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THAT MAY HAVE GOTTEN LEFT TO A UNIVERSITY, SOMETHING LIKE THAT.

A. YES, BUT I LOOKED AT THOSE FOR A VERY SPECIFIC PURPOSE, IN TERMS OF WHAT THEY TOLD ME ABOUT PUBLIC PERCEPTIONS, PUBLIC ATTITUDES, PUBLIC EXPECTATIONS.

Q. YOU DON'T KNOW WHAT THE MINNESOTA REPOSITORY MIGHT CONTAIN ON INFORMATION WITH RESPECT TO PUBLIC ATTITUDES OR PUBLIC KNOWLEDGE, DO YOU?

A. I HAVE NOT LOOKED AT THOSE DOCUMENTS, THAT'S CORRECT.

Q. YOU HAVE NEVER LOOKED AT DOCUMENTS CREATED BY HILL & KNOWLTON, HAVE YOU?

A. THAT'S CORRECT. YES, THAT IS TRUE.

Q. AND YOU KNOW THAT HILL & KNOWLTON WAS IN CHARGE OF ADVERTISING CAMPAIGNS ON BEHALF THE TOBACCO INDUSTRY?

A. I'M AWARE OF THAT, YES.

Q. AND YOU UNDERSTAND THAT HILL & KNOWLTON ALSO PUT OUT PRESS RELEASES TO COUNTER SOME OF THE INFORMATION THAT WAS COMING OUT IN THE PUBLIC PRESS; CORRECT?

A. WELL, I DON'T HAVE ANY DIRECT KNOWLEDGE OF THAT IN TERMS OF HAVING ACTUALLY REVIEWED DOCUMENTS WHERE THOSE -- WHERE THAT MIGHT BE ALLEGED.

Q. OKAY. I WANT TO JUST TO MAKE SURE THAT WE'RE UNDERSTANDING THE SAME INFORMATION. I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBIT 11, AND IT'S EXHIBIT 11, TABS 1 THROUGH 53.



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THE COURT: FOR THE RECORD, IS THAT IN EVIDENCE?

MS. CHABER: I BELIEVE EVERYTHING FROM 2 THROUGH 53 IS.

THE CLERK: EXCEPT 51.

THE COURT: TATSUO SAYS 11-51 IS NOT IN EVIDENCE.

AND YOU HAVE SAID 11-1 IS NOT IN EVIDENCE; IS THAT RIGHT?

MS. CHABER: SO WITH THE EXCEPTION OF THOSE TWO, YOUR HONOR.

THE COURT: ARE YOU JUST ASKING HIM TO LOOK AT THE ONES THAT ARE IN EVIDENCE RIGHT NOW?

MS. CHABER: YES.

THE COURT: WHAT'S THE QUESTION? SO YOU WANT HIM TO LOOK AT EVERYTHING IN 11 OTHER THAN 11-1 AND 11-51; RIGHT?

MS. CHABER: YES.

THE COURT: OKAY.

MS. CHABER: Q. SIR, THE DOCUMENTS -- WELL, WHY DON'T I GIVE YOU A COUPLE OF MINUTES TO JUST KIND OF GO THROUGH THEM.

A. THAT WOULD BE NICE. (EXAMINING) THANK YOU.

ALL RIGHT. I THINK I HAVE A GENERAL IMPRESSION ABOUT THE NATURE OF THESE DOCUMENTS.

Q. OKAY. AND WHAT IS YOUR GENERAL IMPRESSION ABOUT THE NATURE OF THE DOCUMENTS?

A. THEY APPEAR, MOST OF THEM, TO BE PRESS RELEASES



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FROM THE INDUSTRY, ASSERTING OR ALLEGING CERTAIN INFORMATION FOR THE PRESS.

Q. AND DO YOU KNOW WHETHER OR NOT THE TOBACCO COMPANIES WERE SUCCESSFUL IN GETTING THEIR PRESS RELEASES TO THE MEDIA AND TO THE PUBLIC?

A. WELL, MOST OF THE STORIES THAT I'VE READ, FOR EXAMPLE, IN THE NEWSPAPERS SUCH AS THE CHRONICLE OR THE L.A. TIMES IN THE 1950S THE 1960S, MOST OF THE STORIES USUALLY DID INCORPORATE THE VIEWS OF THE TOBACCO INDUSTRY.

ESPECIALLY IF THE STORY WAS VERY NEGATIVE WITH RESPECT TO THE HEALTH CONSEQUENCES OF SMOKING, THE INDUSTRY'S POINT OF VIEW WAS USUALLY REPRESENTED IN THE NEWS REPORTS, YES.

Q. AND SO IS IT FAIR TO SAY THEN THAT -- IS IT FAIR TO SAY THEN, DR. PARRISH, THAT THE REPORTS THAT WOULD APPEAR IN MAGAZINES AND NEWSPAPERS ON HEALTH PROBLEMS OF SMOKING WOULD HAVE THE OTHER SIDE OF THE SORRY; THAT IS, THE SIDE OF THE STORY THAT SAYS: "THIS IS A CONTROVERSY. THIS IS STILL IN DOUBT, THIS IS STILL QUESTIONED"?

A. WELL, THE NEWS STORIES WOULD GENERALLY REPORT THE OPINIONS, THE VIEWS OF THE TOBACCO INDUSTRY, AS WELL AS THE VIEWS, FOR EXAMPLE, OF PEOPLE LIKE DR. OCHSNER OR DR. GRAHAM OR OTHERS OF THOSE WHO WERE DOING THE RESEARCH WITH RESPECT TO LUNG CANCER AND SMOKING.

IT WOULD REPORT, GENERALLY, THE OPINIONS OF THE TOBACCO INDUSTRY AND OF THOSE WHO AGREED WITH THE TOBACCO INDUSTRY, YES.

Q. AND IN FACT, IT WOULD REPORT PEOPLE, DOCTOR, WHO



WERE NOT NECESSARILY IN THESE ARTICLES IDENTIFIED AS HAVING RECEIVED FUNDING FROM THE TOBACCO INDUSTRY; CORRECT?

A. I DON'T KNOW THAT FOR A FACT. IT MAY WELL BE.

Q. AND, SIR, YOU INDICATED THAT YOU READ I THINK WHAT YOU CALLED SECONDARY SOURCES?

A. WHEN I BEGAN MY RESEARCH, I DID ATTEMPT TO READ WHAT I CALL SECONDARY SOURCES, BIOGRAPHIES, FOR EXAMPLE, OF INDIVIDUALS, BOOKS ABOUT THE CIGARETTE INDUSTRY, THE TOBACCO INDUSTRY, YES.

Q. DO YOU KNOW WHO STANTON GLANTZ IS, DR. STANTON GLANTZ?

A. I SEE HIS NAME QUITE OFTEN IN NEWSPAPER ACCOUNTS AND IN OTHER DOCUMENTS. I BELIEVE HE'S A PROFESSOR OF MEDICINE AT THE UNIVERSITY OF CALIFORNIA, MY INSTITUTION, YES.

Q. AT YOUR INSTITUTION, BUT UP HERE IN SAN

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FRANCISCO --
A. YES. HE HAS A VERY --
Q. -- WHERE IT COUNTS?
A. WELL, WE THINK WE HAVE A PRETTY FINE MEDICAL SCHOOL IN SAN DIEGO, TOO.
Q. BUT YOU ARE AWARE THAT DR. STANTON GLANTZ IS AT THE UNIVERSITY OF CALIFORNIA SAN FRANCISCO; CORRECT?
A. YES, I AM AWARE OF THAT.
Q. AND YOU ARE AWARE THAT HE HAS PUBLISHED BOOKS ON THE TOBACCO INDUSTRY AND THE HISTORY OF THE TOBACCO INDUSTRY?
A. I'M AWARE OF THAT, ALTHOUGH I DON'T BELIEVE I



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HAVE SPECIFICALLY READ ANY OF HIS WORK.
Q. YOU HAVE NOT READ HIS BOOK ENTITLED "THE CIGARETTE PAPERS"?
A. NO. BUT I BELIEVE, JUST OUT OF CURIOSITY, I DID SAMPLE SOME OF THOSE. I BELIEVE THEY ARE ON THE INTERNET. I BELIEVE THEY ARE ON THE UNIVERSITY OF CALIFORNIA MEDICAL SCHOOL WEBSITE, THAT YOU CAN INDEED LOOK AT THOSE OVER THE INTERNET.
AND I DID -- SEVERAL YEARS AGO, WHEN THEY WERE FIRST AVAILABLE, I DID GLANCE AT THEM BRIEFLY.
Q. NOW, YOU UNDERSTAND THAT THAT LIBRARY AT UCSF, THE GALEN LIBRARY, HAS A COLLECTION OF THESE PAPERS UPON WHICH DR. GLANTZ BASED HIS BOOK, CORRECT, WHICH YOU -- I THINK YOU WERE REFERRING TO HAVING SEEN THEM ON THE INTERNET, BUT YOU UNDERSTAND THERE'S A LIBRARY?
A. YES. IN FACT, I HAVE BEEN IN THAT LIBRARY, BECAUSE I HAVE GONE THROUGH THE MANUSCRIPTS THERE OF DR. BRESLOW, WHOSE PAPERS ARE ALSO THERE.
AND ALSO THE PROPOSITION 99 PAPERS. ALL OF THE PAPERS ABOUT THE PROPOSITION 99 CAMPAIGN IN TERMS OF CIGARETTE TAXES. AND I HAVE GONE THROUGH THOSE DOCUMENTS IN THE LIBRARY, YES.
Q. BUT YOU DID NOT LOOK AT THE ACTUAL "CIGARETTE PAPERS" UPON WHICH DR. GLANTZ BASED HIS BOOK?
A. NO. NOT IN ANY SYSTEMATIC WAY. NO, I HAVE NOT LOOKED AT THOSE.
Q. AND HAVE YOU READ THE BOOK "ASHES TO ASHES, THE UNBIASED TRIUMPH OF PHILIP MORRIS"?



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A. YES, I HAVE. AND IT'S VERY IRONIC THERE THAT AN AUTHOR OF THAT BOOK AGREES WITH ME IN TERMS OF THE HISTORICAL RECORD.
Q. SIR, AT THE TIME I TOOK YOUR DEPOSITION, YOU HADN'T READ THAT BOOK; CORRECT?
A. I DON'T BELIEVE SO. I THINK I HAD SAID I READ PART OF THAT BOOK. I DON'T BELIEVE I SAID I HAD NOT READ THAT BOOK.
Q. AND YOU NEVER READ THE BOOK CALLED "SMOKE AND MIRRORS"?
A. NO, I HAVE NOT READ THAT.
Q. AND YOU'VE NEVER READ THE BOOK "CORNERED: THE TOBACCO INDUSTRY AT THE BAR OF JUSTICE"?
A. NO.
Q. THE BOOKS THAT YOU INITIALLY READ AS YOUR

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SECONDARY SOURCES, THOSE WERE BOOKS THAT WERE RECOMMENDED TO YOU FOR YOUR READING BY SOMEONE ELSE YOU KNOW WHO DID WORK SIMILAR TO YOU. THAT IS, CONSULTS WITH CIGARETTE COMPANIES WITH RESPECT TO CONSUMER EXPECTATION; CORRECT?

A. WELL, SINCE THIS WAS A FRESH RESEARCH PROJECT FOR ME, AND I HAD NOT DONE ANY RESEARCH IN THIS AREA BEFORE, I DID BEGIN WITH SECONDARY LITERATURE, AND I DID ASK COLLEAGUES, HISTORIANS WHO HAD PREVIOUSLY DONE RESEARCH, ABOUT BOOKS THEY MIGHT RECOMMEND TO GET ME STARTED. EVERYONE HAS TO START SOMEWHERE IN TERMS OF A GENERAL HISTORY OF THE INDUSTRY OR OF THE PARTICULAR -- OF THE PARTICULAR ISSUE.

SO YES, I DID ASK FOR ADVICE FROM OTHER



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HISTORIANS, YES.

Q. DO YOU KNOW WHY -- GIVEN THAT YOU HAD NEVER PUBLISHED ANY INFORMATION ON CIGARETTES OR TOBACCO OR THE CONSUMER EXPECTATION WITH RESPECT TO HEALTH ISSUES OF CIGARETTES, WHY YOU WERE CONTACTED BY THE ATTORNEYS?

A. I GUESS MY REPUTATION AS BEING A VERY THOROUGH AND VERY ABLE HISTORIAN HAD ACTUALLY SPREAD EVEN INTO THE PRECINCTS OF THE BAR ASSOCIATION. I DON'T MEAN TO --

Q. IS THAT A GUESS, SIR?

A. WELL, I HAVE WRITTEN, FOR EXAMPLE, ON SOCIAL MOVEMENTS IN 20TH CENTURY AMERICA. I HAVE WRITTEN A VERY SUBSTANTIAL BOOK ABOUT AMERICA BETWEEN THE WARS.

AND IN THAT BOOK, I TALK ABOUT VARIOUS SOCIAL MOVEMENTS LIKE PROHIBITION, CAMPAIGNS AGAINST ALCOHOL IN THE 1920S.

SO IT'S NOT AS IF I'M COMPLETELY WITHOUT SOME KIND OF BACKGROUND IN THESE TYPES OF SOCIAL MOVEMENTS.

Q. BUT THAT BOOK DID NOT FOCUS ON TOBACCO AND THE MOVEMENTS RELATED TO TOBACCO?

A. THAT'S CORRECT. IT DID NOT SPECIFICALLY FOCUS ON THAT.

Q. YOU YOURSELF BEGAN SMOKING AS TEENAGER, DID YOU NOT?

A. YES, I DID.

Q. IN THE STATE OF CALIFORNIA?

A. YES.

Q. AND YOU HAD FRIENDS THAT WERE SMOKING?

A. YES, I DID. MM-HMM.



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Q. AND ADULTS AROUND YOU WERE SMOKING?

A. YES. MY FATHER WAS A SMOKER. MY MOTHER, HOWEVER, WAS NOT.

Q. AND THERE WAS SMOKING ON TV AT THE TIME YOU WERE GROWING UP?

A. YES, INDEED THERE WAS.

Q. THERE WERE ADVERTISEMENTS ON TV AT THE TIME THAT YOU WERE GROWING UP?

A. YES.

Q. AND THE ADS THAT APPEARED IN THE NEWSPAPERS AND MAGAZINES UP UNTIL THE 1970S HAD NO WARNINGS ON THEM?

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A. YOU'RE REFERRING TO ADS ON TELEVISION OR IN MAGAZINES?
Q. I SAID TV AND NEWSPAPERS. BUT IF YOU WANT TO EXPAND IT TO -- I MEAN NEWSPAPERS AND MAGAZINES. BUT IF YOU WANT TO EXPAND IT TO TV, IT'S TRUE THAT NONE OF THE ADVERTISEMENTS THAT APPEARED ON TV, IN NEWSPAPERS OR IN MAGAZINES UP UNTIL THE 1970S HAD ANY WARNINGS ON THEM?
A. THAT'S CORRECT. THE ONLY WARNINGS WERE ON THE CIGARETTE PACKAGES THEMSELVES, YES.
Q. AND DO YOU KNOW WHAT THE LEVEL OF ADVERTISING IN ANY GIVEN PUBLICATION WAS VERSUS THE AMOUNT OF NEGATIVE HEALTH NEWS ABOUT CIGARETTE SMOKING?
A. WELL, AS YOU MENTIONED OR YOU ASKED ME AT THE START OF THIS QUESTIONING, I DON'T PROFESS TO BE AN EXPERT ON ADVERTISING OR HOW ONE WOULD QUANTIFY, YOU KNOW, THE NUMBER OF ADS VERSUS THE NUMBER OF OTHER HEALTH-RELATED STORIES THAT YOU'RE SPEAKING ABOUT.



I HAVE NOT SYSTEMATICALLY DONE THAT KIND OF COMPARISON, NO.
Q. AND WHEN YOU LOOKED THROUGH ARTICLES OR MAGAZINES OR NEWSPAPERS AND GOT INFORMATION THAT THERE WERE THINGS -- I THINK THERE ARE FIVE OR SIX OF THEM ON THE NEGATIVE HEALTH IMPLICATIONS OF SMOKING -- DID YOU DO ANY ANALYSIS TO SEE HOW MANY NEGATIVE ARTICLES THERE WERE IN COMPARISON TO ARTICLES THAT SAID THIS IS A CONTROVERSY? THIS IS IN DOUBT?
A. WELL, THERE WERE CERTAINLY A NUMBER OF ARTICLES IN THE 1950S, BETWEEN 1950 AND 1957, 1959, IN WHICH WHAT YOU'VE REFERRED TO AS THE CONTROVERSY ABOUT THE RELATIONSHIP BETWEEN CIGARETTES AND LUNG CANCER WAS PROMINENTLY PRESENTED IN MAJOR NEWSPAPERS, MAJOR PERIODICALS.
AND, OF COURSE, ON TELEVISION PROGRAMS LIKE "SEE IT NOW" WITH EDWARD R. MURROW IN 1955.
Q. I'M NOT SURE IF MY QUESTION WAS CLEAR.
HAVE YOU DONE ANY SYSTEMATIC ANALYSIS TO SEE THE NUMBER OF NEGATIVE DISCUSSIONS OF CIGARETTE SMOKING IN A PARTICULAR PUBLICATION VERSUS THE NUMBER OF FAVORABLE ARTICLES FAVORABLE TO THE TOBACCO INDUSTRY?
A. WELL, GENERALLY, THE ONLY FAVORABLE ARTICLES ABOUT THE INDUSTRY THAT YOU'RE REFERRING TO WERE USUALLY INCLUDED OR INCORPORATED IN THE ARTICLES THAT WERE DISCUSSING AND DESCRIBING THE RESEARCH THAT WAS BEING DONE WITH RESPECT TO LUNG CANCER AND CIGARETTES.
IN OTHER WORDS, THE VIEWS OF THE INDUSTRY WERE USUALLY INCORPORATED INTO THOSE NEGATIVE STORIES, SO THEY WOULD APPEAR IN THE VERY SAME CONTEXT WITH THE STORIES ABOUT



THE RESEARCH.
Q. DID YOU DO ANY ANALYSIS OF THE NUMBER OF ARTICLES

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THAT THERE WERE THAT SAID THINGS LIKE, "DO CIGARETTES CAUSE LUNG CANCER?" OR "THE CASE IS NOT PROVEN," COMPARED TO THE NUMBER OF ARTICLES THAT APPEARED SAYING "CIGARETTE SMOKING CAUSES THESE DISEASES"?

A. I HAVE NOT DONE A SYSTEMATICALLY QUANTITATIVE STUDY AS YOU SUGGEST, BUT I AM CERTAINLY AWARE THAT THERE WAS A GOOD DEAL OF CONTROVERSY BETWEEN EPIDEMIOLOGISTS ON THE ONE HAND AND PATHOLOGISTS AND SURGEONS ON THE OTHER. THERE WAS A DEBATE, YES.

MS. CHABER: I'D LIKE TO HAVE A SERIES OF DOCUMENTS MARKED.

THE CLERK: PLAINTIFF'S EXHIBIT 80.

(DOCUMENT MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFF'S EXHIBIT # 80)

MS. CHABER: PLAINTIFF'S EXHIBIT -- DID THE COURT WANT ME TO IDENTIFY THESE BY DATE?

THE COURT: NO, YOU DON'T NEED TO. WHAT I WOULD APPRECIATE IS THAT THE COPY YOU GIVE ME HAS A HOLE IN IT.

OTHER THAN THAT, YOU DON'T NEED TO, UNLESS YOU WANT TO. UNLESS EITHER OF THE COUNSEL WANT THEM IDENTIFIED BY DATE, I DON'T HAVE A PREFERENCE.

HOW MANY ARE WE GOING TO MARK?

MS. CHABER: SIX AT THIS TIME, YOUR HONOR.

THE COURT: SO THAT WILL BE 80 THROUGH 85.



0053

(DOCUMENTS MORE PARTICULARLY DESCRIBED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFF'S EXHIBITS # 80 THROUGH 85)

MS. CHABER: Q. I'M HANDING YOU WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBITS 80 TO 86.

THE CLERK: 85.

MS. CHABER: 85.

Q. DO YOU RECOGNIZE THESE AS DOCUMENTS THAT YOU PRODUCED TO ME IN YOUR DEPOSITION?

A. (EXAMINING) YES, I DO.

Q. AND DOCUMENT NO. 80 IS FROM THE LOS ANGELES TIMES, NOVEMBER 1ST, 1964?

A. YES.

Q. AND THE TITLE IS "SALES ON UPSWING, FEAR OF CIGARETTES CONTINUES TO EBB"? THAT'S THE TITLE?

A. THAT'S THE TITLE, YES.

Q. IT NOTES IN THIS ARTICLE THAT ONE-THIRD OF HIGH SCHOOL STUDENTS TAKE UP THE HABIT OF SMOKING.

A. I'D HAVE TO READ IT. I HAVEN'T READ IT ALL.

Q. DOCTOR, WHEN DID THIS ARTICLE APPEAR IN RELATION TO THE ARTICLES YOU PROVIDED ON WHEN THE SURGEON GENERAL'S ARTICLE APPEARED?

A. WELL, THIS ARTICLE APPEARS, I BELIEVE, FROM NOVEMBER 1ST, 1964. IT WOULD BE ROUGHLY 11 MONTHS AFTER THE JANUARY 12TH SURGEON GENERAL'S REPORT.

AND IT DOES MAKE THAT STATISTICAL ASSERTION ABOUT YOUNG PEOPLE SMOKING, BUT I WOULD -- I WOULD POINT TO OTHER

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DATA, OTHER SOURCES OF INFORMATION WHICH WOULD SUGGEST THAT THERE WAS A VERY HIGH DEGREE OF AWARENESS, EVEN AMONG THESE YOUNG PEOPLE WHO WERE SMOKING, ABOUT THE HEALTH HAZARDS OF WHAT THEY WERE DOING.

Q. DOCTOR, JUST READ ALONG WITH ME TO MAKE SURE I HAVE READ IT CORRECTLY.

DID THE FIRST SENTENCE SAY:

"THE ICY FEAR WHICH STRUCK THE AMERICAN SMOKER IN JANUARY AND FILLED HIM WITH NOBLE RESOLVE HAS BEEN MELTING AWAY FOR SOME SMOKERS."

SO HAS THE NOBLE RESOLVE -- DOES IT SAY THAT?

A. THAT APPEARS TO BE THE OPINION OF JOHN BARBOUR, THE STAFF WRITER FOR THE TIMES, YES.

Q. AND EXHIBIT 81, THE L.A. TIMES, APRIL 28TH, 1964.

THE COURT: IS THAT A QUESTION?

MS. CHABER: Q. IS THAT CORRECT?

I WANT TO MAKE SURE WE'RE LOOKING AT THE SAME DOCUMENT.

A. YES. I AM LOOKING AT THIS APRIL 28TH, 1964 DOCUMENT, YES.

Q. AND THIS WAS PART OF THE DOCUMENTS THAT YOU PROVIDED?

A. THAT'S CORRECT.

Q. AND IN THIS ONE, THE HEADLINE IS "TOBACCO COMPANIES: CIGARETTE PRODUCERS SAY OUTLOOK IS ROSY"?

A. THAT'S WHAT THE HEADLINE SAYS, YES, MA'AM.

Q. AND THIS WAS JUST A COUPLE OF MONTHS AFTER THE



0055

SURGEON GENERAL'S REPORT?

A. THAT WOULD BE THE CASE, YES.

Q. AND IT NOTES THAT PHILIP MORRIS WAS THE LATEST COMPANY TO SUBMIT AN OPTIMISTIC ASSESSMENT. DOES IT SAY THAT?

A. YES.

Q. AND IT SAYS THAT HE EXPECTS THE INDUSTRY'S SALES TO RISE BY AT LEAST 15 PERCENT BY 1970?

A. THAT'S WHAT THE STORY SAYS, YES, MA'AM.

Q. AND DO YOU KNOW, SIR, WHETHER, IN FACT, MR. CULLMAN, THE PRESIDENT OF PHILIP MORRIS AT THAT TIME IN 1964, WHETHER HIS PROJECTIONS WERE CORRECT?

A. I DON'T HAVE ANY RELIABLE INFORMATION ON THAT. BUT YOU CAN CERTAINLY SAY THAT BETWEEN 1964 AND THE PRESENT, THE NUMBER OF PEOPLE WHO SMOKE IN THE UNITED STATES HAS DROPPED WELL OVER 50 PERCENT TO NOW, I THINK, 22 PERCENT.

Q. AND, SIR, THE NUMBER OF TEENAGERS WHO ARE TAKING UP THE HABIT OF SMOKING CIGARETTES, THAT HAS INCREASED, HASN'T IT?

A. WELL, AT THE SAME TIME THAT THERE WAS AN AWARENESS HAS ALSO INCREASED ABOUT THE HEALTH HAZARDS OF DOING THAT HABIT, YES. I MEAN, THAT'S THE IRONIC SITUATION, THAT THE AWARENESS HAS BECOME EVEN MORE PRONOUNCED SINCE 1954.

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25 Q. AND MAYBE IT'S JUST THAT 15-YEAR-OLDS DON'T
KNOW
26 HOW TO MAKE VERY GOOD CHOICES ABOUT THINGS LIKE THAT?
27 MR. OHLEMEYER: OBJECTION. ARGUMENTATIVE.
28 THE COURT: THE WAY YOU PHRASE IT, IT IS

0056
1 ARGUMENTATIVE.
2 MS. CHABER: Q. YOU DON'T PURPORT TO BE AN
3 EXPERT ON THE DECISION-MAKING CAPABILITIES OF
15-YEAR-OLDS,
4 DO YOU, DOCTOR?
5 A. NO, I'M NOT AN EXPERT ON THAT.
6 Q. SIR, IF YOU LOOK THROUGH THE REMAINDER OF THE
7 DOCUMENTS, ARE THOSE ALL DOCUMENTS THAT YOU PRODUCED TO
ME?
8 A. YES, I BELIEVE THEY ARE.
9 Q. OKAY. AND I THINK IT'S DOCUMENT 82. IF I'M
10 CORRECT, THAT'S THE LOS ANGELES TIMES, JUNE 30TH, 1964 --
11 ARE WE ON THE SAME PAGE -- WHERE THE TITLE IS, "LUNG
SURGEON
12 DOUBTS CANCER SMOKING LINK"?
13 A. I'LL HAVE TO FIND THAT, 82.
14 YOU SAY IT LOOKS LIKE IT'S FROM SAN FRANCISCO.
15 "DO CIGARETTES CAUSE LUNG CANCER"? IS THAT WHAT YOU ARE
16 REFERRING TO?
17 Q. NO. YOU ARE LOOKING AT THE WRONG ONE.
18 A. THAT IS 82.
19 Q. 83.
20 A. 83.
21 Q. SIR, THAT IS THE HEADLINE, "LUNG SURGEON DOUBTS
22 CANCER SMOKING LINK" IN EXHIBIT 82?
23 A. YES, THAT'S WHAT THE HEADLINE IS.
24 THE COURT: 82?
25 MS. CHABER: 83.
26 THE WITNESS: YES. AND THAT'S WHAT THE STORY
27 SAYS, YES, MA'AM.
28 MS. CHABER: Q. AND THE STORY DOESN'T SAY

0057
1 ANYTHING ABOUT THIS BEING SOMETHING COMING OUT OF THE
MOUTHS
2 OF THE TOBACCO COMPANIES, DOES IT?
3 A. NO, IT DOES NOT.
4 Q. OKAY. AND THIS SURGEON INDICATES THAT "'WE ARE
5 PRODUCING A DISEASE" -- I'M ON THE THIRD PARAGRAPH --"'A
6 DISEASE WORSE THAN CARCINOMA,' BURFORD SAID IN TESTIMONY
7 BEFORE THE HOUSE COMMERCE COMMITTEE, 'CANCER PHOBIA.'"
8 IS THAT CORRECT? IS THAT WHAT HIS TESTIMONY
WAS?
9 A. THAT'S WHAT THE STORY INDICATES THAT HE WAS
10 QUOTED AS HAVING SAID, YES.
11 Q. I JUST WANT TO DOUBLE-CHECK MY NUMBERS SO WE
12 DON'T GET MIXED UP.
13 AND EXHIBIT 85 IS ANOTHER DOCUMENT YOU PRODUCED
14 TO ME, SIR?
15 A. YES. MM-HMM.
16 Q. AND THAT WAS IN JULY OF 1967?
17 A. YES.
18 Q. AND SIR, THEY TALK ABOUT THE "WARNING IN
CIGARET
19 ADS."
20 DO YOU SEE THAT HEADLINE RIGHT BELOW THE DATE?

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A. YES, I DO.
Q. AND THE CONCERN IS TO TRY TO KEEP YOUNGSTERS FROM STARTING SMOKING?
A. YES, I DO SEE THAT.
Q. AND YOU ALSO SEE THE COMMENT THAT "HALF OF THE NATION'S YOUTH ARE SMOKERS BY THE TIME THEY ARE 18"?
A. I DO SEE THAT STATEMENT, YES.
Q. AND DO YOU ALSO SEE THE STATEMENT THAT, "THE



0058

PRESENT WARNING LABEL ON CIGARET PACKAGES IS INADEQUATE"?
A. THAT'S THE STATEMENT BY THE THEN-SECRETARY OF HEW, MR. GARDNER, AND IT'S NO DOUBT WHY THE CIGARETTE LABELS WERE STRENGTHENED IN THE YEARS THAT FOLLOWED 1967, YES.
Q. IT WASN'T UNTIL 1970 THAT THOSE GOT STRENGTHENED?
A. BUT I'M CERTAIN THAT SECRETARY GARDNER WAS ACTIVELY PUSHING TO STRENGTHEN THOSE LABELS. I KNOW THERE WERE MEMBERS OF CONGRESS WHO WERE SEEKING TO DO SO AFTER 1966, '67.
Q. AND ONE OF THE THINGS THAT HE SAID IS THAT USING THE LANGUAGE "MAY BE HAZARDOUS" WAS INADEQUATE LANGUAGE?
A. I BELIEVE THAT'S THE CASE, YES.
Q. NOW, SIR, YOU DID NOT TAKE INTO CONSIDERATION IN FORMING YOUR OPINIONS THE ACCESS TO THE MEDIA THAT THE TOBACCO INDUSTRY HAD?
A. WHAT DO YOU MEAN BY THE "ACCESS TO THE MEDIA"? I'M AFRAID I DON'T QUITE UNDERSTAND THE DRIFT OF YOUR QUESTION.
Q. WELL, SIR, WE'VE HAD THAT TESTIMONY IN HERE THAT THE CIGARETTE INDUSTRY --
THE COURT: I'D PREFER IT IF YOU JUST ASK THE QUESTION WITHOUT REFERENCE TO OTHER TESTIMONY.
MS. CHABER: Q. SIR, ARE YOU AWARE OF THE CIGARETTE INDUSTRY HAVING DIRECT LINES OF COMMUNICATION TO PRESIDENTS OF NETWORKS?
A. I'M NOT FAMILIAR WITH THAT, NO.
Q. HOW ABOUT TO EDITORS OF NEWSPAPERS AND MAGAZINES?
A. I DO BELIEVE READING SOMETHING ABOUT COMMENTS



0059

THAT WERE DIRECTED, FOR EXAMPLE, AGAINST READER'S DIGEST BECAUSE OF ITS VERY AGGRESSIVE STORIES WITH RESPECT TO CIGARETTES AND PUBLIC HEALTH ISSUES.
Q. AND, OF COURSE, READER'S DIGEST WAS ONE OF THOSE FEW MAGAZINES THAT DIDN'T ACCEPT TOBACCO ADVERTISING; CORRECT?
A. I THINK THAT, INCREASINGLY, A NUMBER OF MAGAZINES DID NOT DO THAT AFTER THE 1950S.
Q. SIR, WAS READER'S DIGEST A MAGAZINE THAT WOULD NOT ACCEPT TOBACCO ADVERTISING?
A. AT A CERTAIN POINT -- I DON'T RECALL EXACTLY WHEN -- YES.
Q. AND, SIR, IN TERMS OF MAGAZINES THAT WERE TAKING

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A STANCE AGAINST THE TOBACCO INDUSTRY, READER'S DIGEST WAS ONE OF THE FEW; CORRECT?

A. WELL, IT DEPENDS ON WHAT YOU MEAN BY "STANCE AGAINST THE TOBACCO INDUSTRY," BECAUSE VIRTUALLY EVERY MAJOR AMERICAN PUBLICATION -- LIFE, THE SATURDAY EVENING POST, COLLIER'S -- ALL CARRIED STORIES ABOUT THE RESEARCH THAT WAS BEING DONE WITH RESPECT TO LUNG CANCER AND CIGARETTES IN THE 1950S AND THE 1960S.

Q. AND AT THE SAME TIME, SIR, THAT THEY WERE CARRYING AN ADVERTISEMENT -- EXCUSE ME -- AN ARTICLE ON THE RESEARCH, DO YOU KNOW HOW MANY CIGARETTE ADVERTISEMENTS WOULD APPEAR IN THAT SAME ISSUE?

A. I HAVEN'T DONE A QUANTITATIVE STUDY, BUT I ASSUME THEY WERE ADVERTISING THERE, YES.

Q. AND DO YOU KNOW WHETHER OR NOT THERE WAS



0060

INFLUENCE EXERTED BY THE TOBACCO INSTITUTE OR ANY OF THE CIGARETTE COMPANIES WITH RESPECT TO THE COVERAGE THAT WAS PROVIDED BY THESE MAGAZINES YOU MENTIONED, COLLIER'S, LIFE, LOOK, ETCETERA?

A. I HAVE NO DIRECT KNOWLEDGE OF THAT, BUT I DO KNOW THAT MOST STORIES, CERTAINLY IN MAGAZINES LIKE NEWSWEEK OR TIME, WOULD ALWAYS SEEK TO BE BALANCED, IN THE SENSE THAT THEY WOULD ALLOW FOR THE INDUSTRY SPOKESPERSONS TO HAVE THEIR SAY.

Q. SO A PERSON WHO READ ANY OF THOSE ARTICLES WOULD BE GETTING TWO SIDES OF A STORY; CORRECT?

A. WELL, I DON'T THINK THERE'S ANY DEBATE AMONG HISTORIANS IN THE 1950S, CERTAINLY UNTIL MAYBE 1957, '59, WHEN THE FIRST SURGEON GENERAL'S REPORTS APPEAR, THAT INDEED THERE WAS A CONTROVERSY AMONG VERY REPUTABLE SCIENTISTS ABOUT THE CONNECTION BETWEEN LUNG CANCER AND CIGARETTES, YES.

Q. SIR, THAT CONTROVERSY WAS MAINTAINED AND CONTINUED THROUGHOUT THE 1960S AND THE 1970S AND THE 1980S; CORRECT?

MR. OHLEMEYER: OBJECTION, YOUR HONOR. IT'S ARGUMENTATIVE AS PHRASED.

THE COURT: I DON'T THINK IT'S ARGUMENTATIVE. I'LL OVERRULE.

THE WITNESS: WOULD YOU REPEAT THE QUESTION FOR ME, PLEASE.

MS. CHABER: MAY I PLEASE HAVE IT READ BACK

THE COURT: BEFORE YOU READ IT BACK, WHEN YOU



0061

SAY "IT WAS MAINTAINED," THAT'S A LITTLE AMBIGUOUS AS TO WHAT YOU MEAN. WHY DON'T YOU REPHRASE. WHY DON'T YOU REPHRASE THE QUESTION.

I'LL ALLOW YOU TO ASK THE QUESTION, BUT THE PHRASEOLOGY, WHY DON'T YOU CHANGE IT.

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MS. CHABER: Q. SIR, IN THE 1960S AND THE 1970S AND THE 1980S, ARTICLES REPORTING ON THE HEALTH HAZARDS OF CIGARETTE SMOKING ALSO REPORTED THAT THIS WAS STILL AN ISSUE OF CONTROVERSY?

A. WELL, IT'S MY OPINION AS AN EXPERT HISTORIAN THAT THE DEGREE OF CONTROVERSY DECLINES VERY SIGNIFICANTLY IN THE 1960S AND THE 1970S. AND I'D LIKE TO TURN TO POLLING DATA, BECAUSE POLLING DATA IS ONLY ONE LITTLE PIECE OF INFORMATION THAT TELLS YOU WHAT OUR PUBLIC ATTITUDES AND PUBLIC PERCEPTIONS ARE.

BUT THE POLLING DATA, FOR EXAMPLE, BY THE GALLUP ORGANIZATION IN THE LATE 1960S, DID INDICATE THAT, IN CERTAIN CASES, NO LESS THAN 60 TO 70 PERCENT OF THE PEOPLE WHO WERE POLLED DID BELIEVE THAT CIGARETTES WERE ONE OF THE CAUSES OF LUNG CANCER. THAT FIGURE HAS RISEN TO OVER 96 PERCENT TODAY IN THE MOST RECENT GALLUP POLLING.

Q. SIR, YOU ARE NOT AN EXPERT ON POLLING DATA, ARE YOU?

A. YOU ARE CERTAINLY CORRECT ON THAT. I'M NOT AN EXPERT ON THAT, BUT I DO READ THEM.

Q. SIR, IN YOUR DEPOSITION, YOU INDICATED TO ME THAT YOU HADN'T READ THE ACTUAL POLLS, YOU READ THE REPORTAGE OF THE POLLS IN THE NEWSPAPERS; CORRECT?



A. THAT'S CORRECT.

Q. AND, SIR, IT MATTERS WHAT QUESTION IS ASKED ABOUT A PARTICULAR QUESTION IN TERMS OF THE WAY RESPONDENTS RESPOND TO POLLING; ISN'T THAT TRUE?

A. WELL, AGAIN, YOU ASKED ME A QUESTION I'M NOT AN EXPERT ON, BUT I WOULD SUSPECT THAT'S PROBABLY THE CASE, YES.

Q. AND SO I THINK IT'S FAIR TO SAY, SIR, THAT WITH RESPECT TO THE DESIGN AND THE VALIDITY OF THE QUESTIONS ASKED, THE MANNER ASKED AND SO FORTH ON POLLING, THAT YOU DON'T CONSIDER YOURSELF TO BE AN EXPERT ON THOSE ISSUES?

A. NO. BUT LIKE ANY REASONABLE PERSON, I CAN READ POLLS, AND I CAN DRAW MY CONCLUSIONS AS A HISTORIAN ABOUT WHAT THOSE POLLS INDICATE ABOUT PUBLIC AWARENESS CONCERNING THOSE ISSUES.

Q. AND AGAIN, IT DEPENDS ON WHAT QUESTIONS ARE ASKED, HOW THEY ARE ASKED, THE ORDER THAT THEY ARE ASKED AND OTHER ISSUES LIKE THAT WHICH AFFECT THE WAY A POLL IS TAKEN; CORRECT?

A. THAT'S CORRECT. BUT IF YOU ASK PEOPLE A VERY SIMPLE QUESTION: "DO YOU BELIEVE THAT SMOKING CIGARETTES IS ONE OF THE CAUSES OF LUNG CANCER," WHICH HAS BEEN A QUESTION ASKED IN THE GALLUP POLLS SINCE 1957, AND THE NUMBERS HAVE NEVER DECLINED FROM 50 PERCENT SINCE 1957 TO THE PRESENT.

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25 THEY HAVE CONTINUED TO GO UP TO WHERE, TODAY, I BELIEVE
THEY
26 ARE 96 PERCENT OF THOSE ASKED THAT VERY SAME QUESTION
27 RESPOND: "YES, I BELIEVE CIGARETTES ARE ONE OF THE CAUSES
28 OF LUNG CANCER."



0063
1 Q. SIR, THE 1957 POLL DOES NOT USE THE WORD
2 "CANCER," DOES IT?
3 A. I BELIEVE IT DOES.
4 Q. DOESN'T IT USE THE WORD "HARMFUL"?
5 A. I THINK YOU'RE REFERRING TO AN EARLIER GALLUP
6 POLL, I THINK, OF 1949, WHICH IN FACT ASKED PEOPLE THE
VERY
7 BROAD QUESTION DO THEY BELIEVE THAT CIGARETTES WERE
HARMFUL.
8 IN THAT POLL, 52 PERCENT IN 1949 -- WHICH IS A
9 VERY ASTONISHING FIGURE TO ME -- BELIEVED THAT CIGARETTES
10 WERE HARMFUL IN A VERY BROAD SENSE.
11 Q. AND IN A VERY BROAD SENSE, LIKE THEY COULD
CAUSE
12 COUGH, THEY COULD CAUSE IRRITATION, THINGS LIKE THAT?
13 A. I THINK PEOPLE MEANT PHYSICAL HARM, YES, SOME
14 KIND OF PHYSICAL HARM.
15 Q. SIR, JUST TO MAKE IT CLEAR, YOU HAVE NOT READ
ALL
16 THE QUESTIONS RELATED TO THE GALLUP POLL OR ANY OTHER
17 POLLING RELATING TO CIGARETTE SMOKING?
18 A. I HAVE READ THOSE PARTS OF THE GALLUP POLL, THE
19 HARRIS POLL AND THE ROPER POLL IN WHICH PEOPLE WERE ASKED
20 SPECIFIC QUESTIONS ABOUT SMOKING AND DISEASE. I HAVE READ
21 THOSE QUESTIONS.
22 Q. AND, SIR, HAVE YOU READ THE CRITICISM PUBLISHED
23 BY THE GALLUP PEOPLE AS TO THE MISUSE IN COURTROOMS OF
THAT
24 DATA?
25 MR. OHLEMEYER: YOUR HONOR, I OBJECT TO THIS
AS
26 BEING ARGUMENTATIVE, LACKING FOUNDATION, AND CALLING FOR
27 HEARSAY.
28 THE COURT: THE QUESTION IS SUGGESTIVE IN ITS



0064
1 NATURE. I'M GOING TO SUSTAIN, WITHOUT PREJUDICE TO YOUR
2 ASKING HIM ON THE SUBJECT WITHOUT PURPORTING TO DESCRIBE A
3 DISCRETE CONCLUSION IN YOUR QUESTION THAT'S SUGGESTIVE AND
4 HAS NO FOUNDATION IN THIS RECORD, AT LEAST AS OF THE
5 PRESENT.
6 MS. CHABER: Q. SIR, HAVE YOU READ THE
7 CRITICISM PUBLISHED BY THE GALLUP ORGANIZATION WITH
RESPECT
8 TO THE USE OF THE POLLING DATA YOU'RE REFERRING TO
9 SPECIFICALLY IN COURTROOMS?
10 A. I HAVE READ --
11 MR. OHLEMEYER: SAME OBJECTION, YOUR HONOR.
12 THE COURT: WHAT'S THE LEGAL GROUNDS OF THE
13 OBJECTION?
14 MR. OHLEMEYER: THAT IT LACKS FOUNDATION AND
IS
15 ARGUMENTATIVE.
16 THE COURT: LET ME HAVE A VERY BRIEF SIDEBAR
17 WITH YOU.
18 (COURT AND COUNSEL CONFER OUTSIDE

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19 THE PRESENCE OF THE JURY)
20 THE COURT: DO YOU WANT TO WITHDRAW AND
REPHRASE
21 THE LAST QUESTION?
22 MS. CHABER: YES.
23 THE COURT: OKAY.
24 MS. CHABER: Q. DR. PARRISH, ARE YOU
FAMILIAR
25 WITH ANY ANALYSIS BY THE GALLUP ORGANIZATION AS TO THE USE
26 OF THAT SPECIFIC POLLING DATA IN COURTROOMS?
27 A. I AM AWARE OF A STORY IN THE WALL STREET
JOURNAL
28 IN THIS PAST YEAR, WHERE THE WALL STREET JOURNAL REPORTED
ON

0065
1 THIS CONTROVERSY BETWEEN THE GALLUP ORGANIZATION AND A
2 HISTORIAN WHO APPARENTLY HAD CITED CERTAIN POLLING DATA IN
A
3 CASE. I'M AWARE OF THE WALL STREET JOURNAL COVERAGE OF
THAT
4 CONTROVERSY, YES.
5 Q. AND THAT GENTLEMAN REFERRED TO IN THE ARTICLE
6 CITED THE SAME DATA THAT YOU CITED HERE TODAY?
7 MR. OHLEMEYER: OBJECTION, YOUR HONOR. THAT
8 LACKS FOUNDATION, CALLS FOR HEARSAY AND IS ARGUMENTATIVE
AS
9 IT'S FRAMED.
10 THE COURT: WELL, WHEN YOU SAY "CALLS FOR
11 HEARSAY," ARE YOU REFERENCING THIS TO PROVE THE TRUTH OF
12 WHAT WAS IN THE ARTICLE OR THAT THAT WAS INFORMATION THAT
13 WAS IN AN ARTICLE?
14 MS. CHABER: IT'S THE INFORMATION THAT WAS IN
AN
15 ARTICLE, AND WHICH HE'S READ AND REVIEWED.
16 THE COURT: ALL RIGHT. IF I GIVE A LIMITING
17 INSTRUCTION, THAT WOULD TAKE CARE OF THE HEARSAY
OBJECTION;
18 RIGHT?
19 MR. OHLEMEYER: IT STILL LACKS FOUNDATION AND
IS
20 ARGUMENTATIVE. IT LACKS FOUNDATION.
21 THE QUESTION IS: DID HE READ IT?
22 MS. CHABER: HE SAID HE DID.
23 THE COURT: HOLD ON.
24 MR. OHLEMEYER: THE FOUNDATION OF THAT DEALS
25 WITH THE TESTIMONY. THERE IS NO FOUNDATION THAT THIS
26 WITNESS' TESTIMONY WAS RELATED TO THE TESTIMONY THAT IS
27 BEING DISCUSSED IN THE QUESTION. THAT'S MY FOUNDATIONAL
28 OBJECTION.

0066
1 THE COURT: I'M NOT SURE I FOLLOW THIS.
2 MR. OHLEMEYER: LET ME WITHDRAW THE OBJECTION.
3 THE COURT: DO YOU WANT ME TO GIVE A LIMITING
4 INSTRUCTION?
5 MR. OHLEMEYER: NO, I WILL JUST WITHDRAW THE
6 OBJECTION.
7 THE COURT: GO AHEAD. HE'S WITHDRAWN THE
8 OBJECTION.
9 MS. CHABER: Q. SIR, THE POLLS THAT WERE
BEING
10 REFERRED TO IN THAT ARTICLE, THAT WAS IN THE WALL STREET

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JOURNAL?
A. THAT'S THE ARTICLE, THE ONLY ONE I'M FAMILIAR WITH, YES.
Q. REFERRING TO THE SAME POLLS THAT YOU ARE REFERRING TO TODAY; CORRECT?
A. WELL, IN A GENERAL SENSE. I BELIEVE THE CONTROVERSY WAS BETWEEN THE GALLUP ORGANIZATION AND THAT HISTORIAN ABOUT WHETHER HE HAD PROPERLY INTERPRETED THOSE POLLS OR WHETHER HE HAD NOT PROPERLY INTERPRETED THEM.
I THINK THAT WAS THE NATURE OF THE CONTROVERSY, AS I UNDERSTAND IT. THAT'S ALL I KNOW ABOUT IT.
Q. AND YOU, SIR, NEVER WENT IN AND ACTUALLY READ THE ARTICLE THAT MUCH, THIS WALL STREET JOURNAL -- STRIKE THAT.
YOU NEVER ACTUALLY WENT AND READ WHAT THE GALLUP PEOPLE PUBLISHED THAT THEN WAS PICKED UP BY THE WALL STREET JOURNAL; IS THAT CORRECT?
A. NO. I HAVE ONLY READ THE WALL STREET JOURNAL'S ACCOUNT OF THIS CONTROVERSY BETWEEN THIS HISTORIAN AND THE



GALLUP ORGANIZATION, ABOUT WHAT THEY CLAIMED TO BE THE ABUSE OF THEIR POLLING DATA BY THIS HISTORIAN.
Q. AND, SIR, I THINK WE'VE ESTABLISHED IT, BUT YOU WOULD AGREE YOU ARE NOT AN EXPERT WITH RESPECT TO THE USE OF POLLING DATA?
A. THAT IS CORRECT.
Q. AND, SIR, ARE YOU FAMILIAR WITH THE TOBACCO INSTITUTE OR THE TOBACCO COMPANIES THROUGH ONE OF THEIR LOBBYING GROUPS PLANTING STORIES IN MAGAZINES THAT ARE PURPORTEDLY WRITTEN BY PEOPLE UNATTACHED TO THE CIGARETTE INDUSTRY?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. LACKS FOUNDATION. IT'S ARGUMENTATIVE.
THE COURT: SUSTAINED ON ARGUMENTATIVE.
MS. CHABER: Q. SIR, ARE YOU --
THE COURT: WHAT I'M GOING TO SUGGEST TO YOU IS THAT IF YOU ASK QUESTIONS, YOU LAY A FOUNDATION FIRST BEFORE YOU COME TO SOME KIND OF A DISCRETE DESCRIPTION OF SOMETHING, BECAUSE YOUR QUESTIONS THEMSELVES CAN BE SUGGESTIVE.
I'VE ALREADY TOLD THE JURY THAT A QUESTION ITSELF IS NOT EVIDENCE, BUT EVEN SO, YOU NEED TO LAY A FOUNDATION BEFORE YOU ASK A SPECIFIC QUESTION.
MS. CHABER: Q. SIR, ARE YOU FAMILIAR WITH THE TOBACCO INSTITUTE OR THE TOBACCO COMPANIES, THROUGH ONE OF THEIR LOBBYING GROUPS, HAVING ARTICLES WRITTEN BY PURPORTEDLY UNCONNECTED AUTHORS?
MR. OHLEMEYER: SAME OBJECTION, YOUR HONOR.



THE COURT: SUSTAINED. IT'S THE SAME QUESTION, WHEN YOU SAY "HAVING ARTICLES WRITTEN."

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MS. CHABER: I'M ASKING HIM IF HE'S FAMILIAR WITH A PRACTICE.
THE COURT: WELL, I'M GOING TO SUSTAIN.
SO THE RECORD IS CLEAR, THIS IS WITHOUT PREJUDICE TO YOUR GOING INTO THIS AREA, BUT YOU NEED TO DO IT IN A NONARGUMENTATIVE WAY.
MS. CHABER: SURE.
THE COURT: ALL RIGHT.
MS. CHABER: Q. ARE YOU FAMILIAR WITH AN ARTICLE IN TRUE MAGAZINE?
A. NO, I DON'T BELIEVE SO.
Q. ARE YOU FAMILIAR WITH ANY ARTICLES WRITTEN BY INDIVIDUALS ON THE BENEFITS OF SMOKING THAT WERE PUBLISHED IN THE '60S OR THE '70S IN ANY MAGAZINES?
A. WELL, I AM FAMILIAR, FOR EXAMPLE, WITH AN ARTICLE THAT APPEARED IN THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION IN 1949 IN WHICH CERTAIN DOCTORS IN FACT SAID THAT THEY BELIEVED THERE WERE CERTAIN BENEFITS FROM SMOKING IN TERMS OF STRESS REDUCTION.
IS THAT WHAT YOU'RE REFERRING TO?
Q. NO. I'M TALKING ABOUT IN THE POPULAR PRESS, SIR.
YOU'RE NOT FAMILIAR WITH THE TRUE MAGAZINE ARTICLE?
A. NO, I'M NOT.
Q. ARE YOU FAMILIAR WITH A SPORTS WRITER WRITING AN



ARTICLE EXTOLLING THE VIRTUES OF SMOKING?
A. NO. BUT I KNOW HONUS WAGNER, THE GREAT THIRD BASEMAN, ASKED THE CIGARETTE COMPANIES TO TAKE HIS PICTURE OFF THEIR CIGARETTE CARDS IN 1909 BECAUSE HE FELT THAT IT WAS CORRUPTING YOUTH, AND THAT CARD IS NOW WORTH HALF A MILLION DOLLARS.
Q. WHICH ONE, SO WE KNOW WHICH ONE TO SAVE, THE ONE WITH THE PICTURE ON IT OR THE ONE --
A. THE HONUS WAGNER CARD FROM THE AMERICAN TOBACCO COMPANY CIGARETTE PACKAGE IN 19 -- I THINK 1909.
Q. NOW, SIR, YOU WOULD AGREE THAT THERE IS A DIFFERENCE BETWEEN PUBLIC AWARENESS AND PUBLIC BELIEF?
A. YES, I WOULD.
Q. I MEAN, WHEN WE'RE TALKING ABOUT PUBLIC AWARENESS, PEOPLE ARE AWARE THAT THERE ARE ALLEGATIONS THAT THERE ARE UFO'S; CORRECT?
A. YES, THEY ARE.
Q. AND THE NUMBER OF PEOPLE AND THE STATE OF BELIEF AS TO WHETHER OR NOT UFO'S ACTUALLY EXIST IS SOMETHING DIFFERENT THAN PEOPLE'S AWARENESS THAT THERE MAY BE UFO'S?
A. THAT'S CORRECT. MOST OF MY RESEARCH HAS BEEN FOCUSED UPON THE ISSUE OF AWARENESS IN TERMS OF THE AVAILABILITY OF INFORMATION THAT PEOPLE GENERALLY HAD ABOUT THESE ISSUES. THAT'S CORRECT.
Q. AND WITH RESPECT TO THE WORK THAT YOU'VE DONE, SIR, YOU PRODUCED A NUMBER OF BOXES OF DOCUMENTS THAT YOU RELIED ON?

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28 A. YES. I'VE LOOKED AT A LARGE NUMBER OF DOCUMENTS



0070

OVER THE PAST THREE OR FOUR YEARS.
Q. AND A GOOD PORTION OF THOSE DOCUMENTS RELATED TO PROP. 99?
A. SOME OF THEM DID. I DID GO THROUGH THE PROP. 99
PAPERS THAT ARE OVER AT THE MEDICAL LIBRARY HERE IN SAN FRANCISCO, THE UC MEDICAL SCHOOL, YES.
Q. AND WHAT YEAR WAS THAT?
A. IN THE LATE 1980S. '88, '89, I BELIEVE.
Q. AND THE INFORMATION THAT YOU WERE LOOKING AT WITH RESPECT TO I THINK YOU SAID LETTERS TO CONGRESSMEN, THAT'S NOT INFORMATION THAT WAS AVAILABLE TO THE GENERAL PUBLIC, IS IT?
A. WELL, NO. BUT IT CERTAINLY INDICATES THE OPINION OF PEOPLE WHO WERE WRITING TO THEIR CONGRESSMEN ABOUT ISSUES LIKE THE CIGARETTE LABELING ACT OR EARTH SMART. THERE'S A FAMOUS LETTER, WHICH IS A LETTER FROM FORMER PRESIDENT HARRY TRUMAN TO SENATOR RICHARD NEWBERGER IN 1957, IN WHICH MR. TRUMAN SAYS:
"CIGARETTES HAVE BEEN A HEALTH MENACE FROM THE BEGINNING. COLUMBUS GAVE THE INDIANS TYPHUS AND THE INDIANS GAVE US TOBACCO. I DON'T KNOW WHICH IS THE WORST CURSE."
Q. AND WE SENT CIGARETTES TO OUR SERVICEMEN ALL THE WAY THROUGH THE VIETNAM WAR, DID WE NOT, PROVIDED IN C-RATIONS?
A. I'M NOT ABSOLUTELY CERTAIN ABOUT VIETNAM. I KNOW THERE IS A POINT AT WHICH THE GOVERNMENT CEASES TO PROVIDE FREE CIGARETTES TO THE MILITARY. I'M NOT EXACTLY SURE WHEN

JUDITH ANN OSSA, CSR NO. 2310

0071

THE DATE IS.
I THINK YOU MIGHT -- I THINK YOU MIGHT NOT BE CORRECT ABOUT THAT.
Q. IT'S AFTER TRUMAN THOUGH, ISN'T IT?
A. PARDON ME?
Q. IT'S AFTER TRUMAN, ISN'T IT?
A. IT WOULD BE AFTER HARRY TRUMAN, CERTAINLY.
Q. THERE ARE CERTAIN PRESIDENTS, LIKE JOHNSON SMOKED IN THE WHITE HOUSE, A HEAVY CIGARETTE SMOKER?
A. I DON'T -- I DON'T REALLY HAVE DIRECT KNOWLEDGE ABOUT THAT.
Q. AND, SIR, IT'S TRUE, IS IT NOT, THAT YOU ARE BEING PAID FOR YOUR TIME?
A. WELL, I HAVE BEEN PAID FOR THE RESEARCH THAT I'VE DONE, YES.
Q. AND YOU'RE PAID FOR THE TIME THAT YOU TAKE TO GIVE DEPOSITIONS?

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A. YES. YES, INDEED.
Q. AND THE TIME THAT IT TAKES TO PREPARE FOR THOSE DEPOSITIONS?
A. YES.
Q. AND YOU'VE BEEN DEPOSED ON HOW MANY OCCASIONS NOW; THREE, FOUR?
A. WELL, LET'S SEE. YOU DEPOSED ME IN THIS CASE, AND I BELIEVE THERE WAS THE WASHINGTON -- THERE WAS A CASE IN WASHINGTON, AND ONE IN PENNSYLVANIA AND NEW YORK.
I THINK THAT'S FOUR. YES.
Q. OKAY. AND YOU HAVE BEEN PAID FOR YOUR TIME HERE



0072

TODAY?
A. YES, INDEED.
Q. THAT'S MONEY THAT GOES TO YOU, NOT TO THE UNIVERSITY; CORRECT?
A. OH, YES. IT GOES TO ME AS A CONSULTANT. YES, IT GOES TO ME, YES.
Q. AND OKAY. YOU INDICATED IN YOUR DEPOSITION THAT YOU AVERAGE SOME 35 -- EXCUSE ME -- I THINK IT WAS 25 TO 30 HOURS EVERY MONTH INVOLVED IN THIS PURSUIT?
A. WELL, IT WOULD DEPEND UPON THE MONTH. IN SOME MONTHS, IT WOULD REACH THAT FIGURE. OTHER MONTHS, IT WOULD BE LESS THAN THAT.
BUT I HAVE DONE A GOOD NUMBER OF DEPOSITIONS IN A NUMBER OF CASES OVER THE LAST THREE TO FOUR YEARS, YES.
MS. CHABER: NOTHING FURTHER.
THE COURT: ANYTHING FURTHER?
MR. OHLEMEYER: VERY BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. OHLEMEYER: Q. DR. PARRISH, WHAT USE WOULD YOU, AS AN HISTORIAN, MAKE OF LETTERS TO THE EDITOR OR LETTERS TO CONGRESSMEN IN DETERMINING MATTERS OF COMMON KNOWLEDGE AT ANY PARTICULAR POINT IN TIME?
A. WELL, I THINK LETTERS TO THE EDITOR ARE WAYS IN WHICH PEOPLE IN THE GENERAL PUBLIC HAVE AN OPPORTUNITY TO EXPRESS THEIR OPINIONS, THEIR CONCLUSIONS, THEIR VIEWS ABOUT IMPORTANT PUBLIC ISSUES.
AND THE SAME THING WOULD GO FOR LETTERS THAT THEY



0073

WRITE TO THEIR CONGRESSMEN OR TO THE GOVERNOR OR TO THEIR SENATOR. THAT'S A VERY FINE EXAMPLE OF HOW LETTERS, I THINK, BOTH REFLECT POPULAR AWARENESS, POPULAR UNDERSTANDING, AND TO SOME EXTENT THAT MAY ALSO CREATE AWARENESS ON THE PART OF OTHER PEOPLE WHO READ THOSE LETTERS AND BASICALLY SAY, "WELL, GEE, YES, THAT'S EXACTLY WHAT I BELIEVE" OR "THAT'S HOW I FEEL AS WELL."
Q. WERE CONSUMER EXPECTATIONS ABOUT SMOKING AND HEALTH FORMED BEFORE AND DURING THE SAME TIME PERIODS THAT PEOPLE WERE RUNNING ADVERTISEMENTS FOR CIGARETTES AND

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OTHER
TOBACCO PRODUCTS?
A. WOULD YOU REPHRASE THAT QUESTION, PLEASE.
Q. WE HEARD SOME QUESTIONS ABOUT ADVERTISING FOR TOBACCO PRODUCTS; RIGHT?
A. YES.
Q. WERE THE EXPECTATIONS ABOUT SMOKING THAT YOU'VE DESCRIBED FOR US TODAY FORMED BEFORE OR DURING THE PERIODS OF TIME IN WHICH THERE HAVE BEEN ADVERTISEMENTS FOR CIGARETTES AND OTHER TOBACCO PRODUCTS?
A. OH, YES. I MEAN, CERTAINLY THERE WAS A GREAT DEAL OF CIGARETTE ADVERTISING IN 1964, IN THE LATE 1960S, AND ON TELEVISION UNTIL THE EARLY 1970S, YES.
Q. AND DOES THE PUBLIC HEALTH COMMUNITY HAVE ACCESS
TO THE MEDIA, AS MS. CHABER DESCRIBED IT?
A. WELL, IN 1957, THE FEDERAL TRADE COMMISSION, THE
FEDERAL COMMUNICATIONS COMMISSION, IF I RECALL, ADOPTED WHAT
WAS CALLED THE FAIRNESS DOCTRINE, TO REQUIRE THAT RADIO AND
TELEVISION STATIONS OFFER FREE TIME TO THE AMERICAN CANCER

0074
SOCIETY OR THE HEART ASSOCIATION IN WHICH TO PRESENT THEIR MATERIAL WITH RESPECT TO THE HEALTH HAZARDS OF SMOKING.
AND I THINK THERE'S SOME INDICATION THAT SMOKING
IN FACT DID DECLINE IN THAT PERIOD AS A RESULT OF MANY OF THESE TELEVISION ADS, THE MOST FAMOUS OF WHICH WAS, OF COURSE, BY THE CHARACTER WHO PLAYED THE DISTRICT ATTORNEY IN
THE PERRY MASON TELEVISION SHOW. HE WAS SUFFERING FROM LUNG
CANCER, AND HE MADE A VERY POWERFUL COMMERCIAL ON BEHALF OF
THE AMERICAN CANCER SOCIETY CONCERNING HIS DISEASE AND CONCERNING THE DANGERS OF SMOKING BEFORE HE DIED.
Q. IN STUDYING OR TRYING TO DETERMINE MATTERS OF COMMON KNOWLEDGE WITH RESPECT TO SMOKING AND HEALTH, DID YOU
RELY ON MORE INFORMATION THAN YOU WOULD FIND IN A POLL OR POLLING DATA?
A. WELL, AS I MENTIONED IN THE CROSS-EXAMINATION, I
DON'T LIKE TO USE POLLING DATA AS SOME KIND OF FINAL OR DEFINITIVE INDICATION OF WHAT PEOPLE THOUGHT OR WHAT THEY WERE AWARE OF, BECAUSE I THINK IT'S ONLY ONE SOURCE, AND IT'S ONLY ONE SOURCE THAT I LOOKED AT.
IT DOES, I THINK, TEND TO CONFIRM THE OTHER RESEARCH I DID, HOWEVER. BECAUSE IF YOU LOOK AT THOSE GALLUP POLLS EVEN AS EARLY AS 1954 -- 1954 IS VERY EARLY. THAT'S 10 YEARS BEFORE THE LANDMARK SURGEON GENERAL'S REPORT -- YOU HAVE A GALLUP POLL THAT INDICATES THAT 83 PERCENT OF THE AMERICAN PEOPLE WERE AWARE OF WHAT'S BEEN CALLED THE CONTROVERSY ABOUT LUNG CANCER AND SMOKING, AND THAT NUMBER RISES TO OVER 90 PERCENT BY 1957.
AND IT SEEMS TO ME THAT THAT IS FAIRLY

0075
POWERFUL -- POWERFUL DATA WITH RESPECT TO THE ISSUE OF AWARENESS.

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IN FACT, I THINK GEORGE GALLUP SAID HE WAS UNAWARE OF ANY COMPARABLE FIGURE IN THE HISTORY OF HIS ORGANIZATION IN TERMS OF THEIR AWARENESS OF AN ISSUE LIKE THAT.

Q. AND FINALLY --

MS. CHABER: I WOULD OBJECT. MOVE TO STRIKE. HEARSAY.

THE COURT: WHICH PORTION OF THE ANSWER?

MS. CHABER: THE QUOTE.

THE COURT: ABOUT MR. GALLUP?

MS. CHABER: YES.

THE COURT: OKAY. I'LL STRIKE THE PORTION ABOUT MR. GALLUP.

MR. OHLEMEYER: Q. DR. PARRISH, FINALLY, REGARDLESS OF THE FACT THAT CIGARETTES HAVE BEEN ADVERTISED OVER THE YEARS, AND REGARDLESS OF THE FACT THAT THERE HAVE BEEN STORIES IN NEWSPAPERS THAT ARE EQUIVOCAL OR EVEN INDIFFERENT ABOUT SMOKING AND HEALTH, WERE THE RISKS ASSOCIATED WITH SMOKING MATTERS OF COMMON KNOWLEDGE AMONG SMOKERS AND NONSMOKERS ALIKE IN CALIFORNIA PRIOR TO 1964?

A. I WOULD SAY YES.

MR. OHLEMEYER: THAT'S ALL I HAVE. THANK YOU, YOUR HONOR.

THE COURT: MS. CHABER.

MS. CHABER: TWO QUESTIONS.

RECROSS-EXAMINATION





BY MS. CHABER: Q. THE FAIRNESS DOCTRINE THAT YOU MENTIONED, WHERE THE HEALTH COMMUNITY COULD COME ON TV AND PUT ON DRAMATIC ADS LIKE YOU DESCRIBED WITH I THINK IT WAS BURGESS MEREDITH?

A. NO, IT WAS WILLIAM TALMAN, WHO PLAYED HAMILTON BERGER. HE NEVER WON A CASE AGAINST PERRY MASON. I THINK THAT WAS HIS PROBLEM.

I'M NOT SURE THAT SMOKING CONTRIBUTED TO THAT, BUT HE NEVER WON A CASE.

Q. HE NEVER WON A CASE BECAUSE THE PERSON WHO REALLY DID IT WAS ALWAYS SITTING BEHIND THE BAR HERE (INDICATING) AND CONFESSED?

A. THAT'S CORRECT. THAT'S CORRECT.

Q. BUT GOING BACK TO THE FAIRNESS DOCTRINE, ISN'T THAT THE VERY REASON THAT THE TOBACCO COMPANIES TOOK THEIR ADS OFF TV, THAT THEY DIDN'T WANT TO GIVE THE HEALTH COMMUNITY THE OPPORTUNITY TO PUT ON AN EQUAL AMOUNT?

A. WELL, THOSE ADS, AS I SAID, I THINK THEY WERE VERY EFFECTIVE. BUT I THINK THERE WAS ANOTHER REASON, THAT THE INDUSTRY WAS ALSO FACING THE PROSPECT THAT CONGRESS WAS GOING TO DIRECTLY LEGISLATE IN THAT AREA.

CONGRESSMEN ADAMS OF WASHINGTON, SENATOR MAGNUSON, THEY WERE PUSHING VERY HARD FOR A VERY FLAT PROHIBITION ON RADIO AND TELEVISION ADVERTISING OF TOBACCO PRODUCTS.

AND SO THERE WAS THAT ANXIETY THAT INDEED THEY WOULD FACE A STATUTORY BAN ON ALL TYPES OF ADVERTISING ON TELEVISION AND RADIO.



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0077
Q. AND SO IT WAS A COMBINED FEAR, A FEAR THAT THEY WOULD GET REGULATED AND A FEAR THAT THEY WOULD HAVE TO GIVE EQUAL TIME TO THE HEALTH COMMUNITY; CORRECT?
A. YES. AND SO THEY VOLUNTARILY THEN REMOVED THEIR ADS FROM TELEVISION AND FROM RADIO, YES.
Q. AND REGARDLESS OF THE FACTS, AS YOU PUT IT, ABOUT ALL THE HAZARDS OF CIGARETTE SMOKING, IT'S TRUE, IS IT NOT, THAT THE CIGARETTE COMPANIES HAVE DENIED THOSE FACTS TO THE PUBLIC AND IN PUBLIC?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. IT'S VAGUE AND ARGUMENTATIVE.
THE COURT: IT'S ARGUMENTATIVE, BUT YOU CAN ASK IN THAT AREA.
MS. CHABER: YES, SIR.
Q. ISN'T IT TRUE THAT THE CIGARETTE COMPANIES HAVE PUBLICLY STATED THAT THEY DO NOT BELIEVE THAT CIGARETTE SMOKING CAUSES LUNG CANCER?
A. I BELIEVE I'VE READ SUCH STATEMENTS BY THEM, YES.
Q. AND THOSE STATEMENTS APPEAR IN MANY DIFFERENT FORUMS AND MANY DIFFERENT MEDIA?
A. I BELIEVE THAT'S THE CASE, WITH THE EXCEPTION I THINK OF MR. LEBOW, WHO IN THE PAST YEAR, I THINK HAS BEEN --
MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I THINK HE'S ANSWERED THE QUESTION. I THINK WE'RE INTO AN ISSUE THAT WE DEALT WITH --
THE COURT: HE ANSWERED THAT ONE. WE'LL SEE WHETHER THERE IS A QUESTION, ANOTHER QUESTION AND AN



0078
OBJECTION, BUT THAT ONE HAS BEEN ANSWERED.
MS. CHABER: COULD I JUST HAVE THE ANSWER READ BACK UP TO THE POINT WHERE MR. OHLEMEYER OBJECTED ABOUT MR. LEBOW?
THE COURT: YES.
IS THERE ANY OBJECTION TO THAT BEING READ BACK?
MR. OHLEMEYER: NO.
THE COURT: YES, YOU MAY.
MS. CHABER: ACTUALLY, IF I COULD HAVE MY QUESTION AND THAT ANSWER. THEN I NEED TO SEE IF I NEED TO SIT DOWN OR ASK ONE MORE.
THE COURT: THAT'S FINE.
(RECORD READ)
MS. CHABER: Q. AND THE STATEMENTS THAT YOU'RE REFERRING TO, SIR, ARE THE STATEMENTS THAT THE CIGARETTE COMPANIES CONTINUE TO SAY, WHICH IS CIGARETTE SMOKING DOES NOT CAUSE LUNG CANCER?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. THAT'S ARGUMENTATIVE. IT'S A MISSTATEMENT OF THE EVIDENCE IN THIS CASE.
THE COURT: WELL, WHY DON'T YOU ASK HIM WHAT

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THE
22 STATEMENTS ARE THAT HE'S REFERRING TO. THEN YOU CAN ASK
IT
23 YOUR OWN WAY.
24 I'LL SUSTAIN, BUT WITHOUT PREJUDICE.
25 MS. CHABER: YES.
26 Q. TO THIS DAY, SIR, THERE ARE STATEMENTS IN THE
27 NEWSPAPERS, IN THE MAGAZINES AND MANY OTHER FORUMS
PRESENTED
28 TO THE PUBLIC THAT CIGARETTE SMOKING DOES NOT CAUSE LUNG

0079
1 CANCER; CORRECT?
2 MR. OHLEMEYER: SAME OBJECTION.
3 THE COURT: HOLD ON.
4 THE QUESTION IS WHETHER THERE ARE SUCH
5 STATEMENTS, WHETHER OR NOT THERE ARE SUCH STATEMENTS IN
THE
6 NEWSPAPERS AND IN THE MAGAZINES.
7 MR. OHLEMEYER: I'LL WITHDRAW THE OBJECTION.
8 THE COURT: THAT'S THE QUESTION.
9 THE WITNESS: TO THE BEST OF MY KNOWLEDGE,
THERE
10 PROBABLY ARE, YES.
11 MS. CHABER: Q. AND ALL OF THOSE TYPES OF
12 STATEMENTS THAT CIGARETTE SMOKING DOES NOT CAUSE LUNG
CANCER
13 ARE STATEMENTS BY THE CIGARETTE COMPANIES; CORRECT?
14 MR. OHLEMEYER: THAT IS ARGUMENTATIVE.
15 THE COURT: WELL --
16 MR. OHLEMEYER: AND LACKS FOUNDATION.
17 THE COURT: IT LACKS FOUNDATION. I'LL
SUSTAIN.
18 MS. CHABER: Q. DO YOU KNOW, SIR, OF ANY
19 ORGANIZATION OTHER THAN THE CIGARETTE COMPANIES OR THEIR
20 LOBBYING GROUPS WHO HAVE MADE STATEMENTS IN THE PRESS OR
21 FORUMS IN 1998 THAT CIGARETTE SMOKING DOES NOT CAUSE LUNG
22 CANCER?
23 MR. OHLEMEYER: I OBJECT. IT'S STILL
24 ARGUMENTATIVE.
25 THE COURT: IT IS.
26 MR. OHLEMEYER: LACK OF FOUNDATION.
27 THE COURT: SUSTAINED.
28 MS. CHABER: Q. SIR, WHAT ORGANIZATIONS HAVE

0080
1 MADE STATEMENTS IN 1998 THAT CIGARETTE SMOKING DOES NOT
2 CAUSE LUNG CANCER?
3 A. COULD YOU REPHRASE. THE QUESTION HAS BEEN
STATED
4 SO MANY TIMES, I'M AFRAID THAT I DON'T REALLY KNOW WHAT
5 QUESTION IS BEING ASKED OF ME AT THIS POINT.
6 Q. YOU INDICATED THAT THERE HAVE BEEN STATEMENTS
7 MADE IN RECENT YEARS -- I WILL JUST GIVE YOU 1998 TO MAKE
IT
8 CLEARER -- TO THE EFFECT THAT CIGARETTE SMOKING DOES NOT
9 CAUSE LUNG CANCER; CORRECT?
10 A. YES, I WOULD AGREE TO THAT.
11 Q. AND TELL ME WHO HAS MADE THOSE STATEMENTS.
12 A. I MEAN, I CAN'T GIVE YOU A SPECIFIC NAME. I
13 MEAN, I CANNOT -- I CAN'T -- I CAN'T IDENTIFY A SPECIFIC
14 NAME OR A SPECIFIC ORGANIZATION, BUT I CERTAINLY KNOW THAT
15 SUCH STATEMENTS HAVE BEEN MADE. CERTAINLY, THEY WERE MADE

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IN THE 1950S.
Q. IN THE 1990S, SIR, DO YOU KNOW OF ANY ORGANIZATION THAT HAS MADE THAT STATEMENT THAT CIGARETTE SMOKING DOES NOT CAUSE LUNG CANCER?
A. I'M AFRAID I COULDN'T NAME A SPECIFIC ORGANIZATION.
Q. DO YOU KNOW WHETHER OR NOT PHILIP MORRIS HAS MADE THAT STATEMENT?
A. I DON'T HAVE ANY DIRECT KNOWLEDGE ABOUT THAT. I'M AFRAID I CAN'T ANSWER THAT.
Q. DO YOU KNOW WHETHER ANY CIGARETTE COMPANY HAS MADE THAT STATEMENT?
A. IN THE PAST YEAR?



0081

Q. IN THE PAST YEAR.
A. I COULD NOT -- I COULD NOT ANSWER THAT QUESTION BASED UPON MY READING OF ANY DOCUMENT OR NEWSPAPER.
Q. HAVE YOU REVIEWED ANY CONGRESSIONAL TESTIMONY IN THE 1990S, SIR?
A. YES.
Q. AND IN YOUR REVIEW OF CONGRESSIONAL TESTIMONY IN THE 1990S, HAVE YOU SEEN ANY STATEMENTS BY CIGARETTE COMPANIES ADMITTING THAT CIGARETTE SMOKING CAUSES LUNG CANCER?
A. I DON'T RECALL SUCH STATEMENTS.
MS. CHABER: I HAVE NOTHING FURTHER.
THE COURT: ANYTHING FURTHER?
MR. OHLEMEYER: NO, YOUR HONOR.
THE COURT: MAY DR. PARRISH BE EXCUSED?
MR. OHLEMEYER: YES.
MS. CHABER: YES.
THE COURT: YES?
MS. CHABER: YES.
THE COURT: OKAY. DR. PARRISH, YOU ARE EXCUSED.
MR. OHLEMEYER: THANK YOU, DOCTOR.
(WITNESS EXCUSED)
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